

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

CASE 16-W-0130 - Proceeding on Motion of the Commission as to  
the Rates, Charges, Rules and Regulations of  
Suez Water New York Inc. for Water Service.

ORDER ESTABLISHING RATE PLAN

Issued and Effective: January 24, 2017

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STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on January 24, 2017

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair  
Patricia L. Acampora  
Gregg C. Sayre  
Diane X. Burman, concurring

CASE 16-W-0130 - Proceeding on Motion of the Commission as to  
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(Issued and Effective January 24, 2017)

BY THE COMMISSION:

INTRODUCTION

This order establishes a three-year rate plan for water service provided by Suez Water New York, Inc. (Suez or the Company). The terms and conditions we establish in this order will take effect on February 1, 2017 and will apply to water service provided to approximately 74,000 customers located mostly in Rockland County.<sup>1</sup>

The rate plan we are adopting is based in significant measure on a Joint Proposal (JP) that was submitted by the Company and the New York State Department of Public Service Staff (Staff) as the primary proponents. The JP was vigorously challenged and debated by a number of parties. After carefully considering the terms of the JP and the arguments for and

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<sup>1</sup> Suez also supplies water service to just over 300 customers in the Towns of Tuxedo and Warwick, located in Orange County.

against it, we are conditionally approving a three-year rate plan based largely on the JP, but with significant modifications designed to strike a better balance between shareholder and ratepayer interests, and to strengthen efforts to make conservation and demand reduction including efforts to reduce non-revenue water successful as an alternative to the now-abandoned desalination plant and to other supply alternatives. Under the terms of this order, Suez has the option of unconditionally accepting our rate plan. In the absence of such an acceptance, we order an alternative one-year rate plan that is set forth later in this order.

Our rate plan addresses the contentious issue of cost recovery associated with the now-abandoned Haverstraw Water Supply Project (HWSP). We modify that provision of the JP to provide a reduced level of equity return on the HWSP investment to better balance shareholder and ratepayer interests. The rate plan also includes a five-year conservation and efficiency plan and a program to reduce non-revenue water, both of which are necessary and important steps towards maximizing the efficient use of existing water supplies, steps acknowledged as important, even critical by most, if not all the parties to this case. These programs are designed to reduce demand in excess of three million gallons per day (MGD), with other aspects of the rate plan (e.g., conservation-oriented rate design, advanced metering infrastructure, conservation outreach and education) expected to make additional contributions to conservation beyond the 3 MGD. These efforts will require skillful management by the Company and strong community outreach and stakeholder partnerships. The rate plan we are adopting is designed to align shareholder and ratepayer interests in maximizing the efficient use of existing water supplies.

The rate plan will implement levelized rate increases (\$4.874 million in each of the three years) that will provide

funding for investments that will facilitate better management and control of water supplied and distributed by Suez to over 290,000 people located predominately in Rockland County. Finally, the three-year term of the plan will give Suez time to focus its efforts on improving its system and its customer service and relations. All of the foregoing will benefit ratepayers by ensuring more efficient and effective water service at stable and reasonable rates.

The Commission's approach is to establish institutional frameworks that encourage the Company to improve system efficiency by implementing proactive water-loss and conservation management practices. Those practices must include water conservation programs, water conservation-oriented rates, active leak detection and repair programs, programs to accelerate repairs once leaks are reported, regular metering tests, meter upgrades as necessary, water supply auditing on a regular basis, regular water accounting and billing tests, incentives for management to control water losses, and programs for the reduction of water theft. If the Company addresses water losses and conservation proactively through the adoption of innovative management strategies, it can successfully improve system efficiency and overall performance.

In our recent orders addressing the HWSP, we explained our concern that the conservation methods within the Company's control were not likely to eliminate the need for long-term supply sources. In those orders, we recognized that local government action is necessary to realize the full potential benefits of conservation, and we made clear that local government action is needed to ensure a safe and reliable supply in the future. Our clear expectation was that all parties would undertake concrete and verifiable steps to conserve and protect Rockland County's finite water supplies. The modified Joint Proposal we are adopting today is a significant step towards

undertaking those concrete and verifiable steps. However, the record has not demonstrated material steps undertaken by local governments designed to offer concrete and verifiable results that we can rely on to support our conservation goals. The Company's efforts alone will not protect Rockland County's long-term water supply needs, and we continue to strongly urge local governments to undertake concrete steps to promote conservation efforts such as irrigation ordinances, new construction and retrofit ordinances and water waste ordinances.

#### PROCEDURAL BACKGROUND

On February 26, 2016, Suez filed for a rate increase of \$11.6 million or 13.7%. The filing was suspended and this case was established to examine the propriety and reasonableness of the Company's proposals.<sup>2</sup> An administrative law judge (ALJ or judge) and a settlement team were assigned to the rate case.<sup>3</sup>

Procedural and technical conferences were held on April 20, 2016, in Albany, with several interested persons participating by phone. On May 2, 2016, the litigation judge issued a Ruling on Schedule and Party Status Requests that, among other things, adopted a schedule for the case that included the opportunity for the submission of two additional rounds of testimony and accompanying exhibits (the New York State Department of Public Service Staff (Staff) and Intervenor

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<sup>2</sup> Notice of Suspension of Effective Date of Major Rate Change and Initiation of a Proceeding, issued March 4, 2016; Notice of Further Suspension of Effective Date of Major Rate Change, issued June 23, 2016; and Order Approving Extension of Maximum Suspension Period of Major Rate Filing, issued December 16, 2016. The December 16<sup>th</sup> Order further suspended the Company's proposed tariff amendments through February 24, 2017, with a make whole provision.

<sup>3</sup> ALJ Michelle L. Phillips was assigned as the litigation ALJ; the assigned settlement team included ALJ Ashley Moreno, Kevin Manz, and Jalila Aissi.

initial testimony and exhibits, and all parties' rebuttal testimony and exhibits).

On May 24, 2016, a notice was issued announcing the dates, times, and locations of four public statement hearings and public information sessions. Consistent with the notice, afternoon and evening public information sessions and public statement hearings were held in Stony Point and Suffern, on June 15 and 16, 2016, respectively. Between 15 to 24 people spoke at each public statement hearing and 45 to 60 people attended each hearing.

On July 1, 2016, Staff, Public Utility Law Project, Inc. (PULP), Rockland County, the Municipal Consortium and Bruce Levine filed testimony and exhibits; Harriett Cornell, on behalf of the Rockland County Water Task Force (Task Force), filed testimony on July 7, after requesting and being granted leave to resubmit as testimony the comments that she previously had filed on July 1. Among other things, Staff recommended a revenue increase of \$4.27 million or 5.1%, an overall return on equity of 8.5% based on an equity ratio of 47%, disallowance of over \$1 million in HWSP costs, with recovery over 15 years, and various enhancements to the conservation plan and conservation oriented-rates.<sup>4</sup> On July 15, 2016, rebuttal testimony and exhibits were filed by Robert Tompkins, Rockland County, Suez, and the Municipal Consortium.

On July 19, 2016, Suez filed a notice of impending settlement negotiations, advising that the first negotiation session would be held on July 26, in Albany, and that the location, date and time of subsequent negotiations would be provided to all parties at a later date. In accordance with the

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<sup>4</sup> See Hearing Exhibits 42 and 42.



Commission's rules, the required review of the notice was completed and reported on July 20, 2016.<sup>5</sup>

By letter dated August 12, 2016, Suez advised that it and Staff had reached a tentative agreement in principle. The Company and Staff requested postponement of the evidentiary hearing that was scheduled to begin on August 16, and the Company agreed to extend the suspension period by an additional month, subject to a "make-whole" provision, if the evidentiary hearing was postponed to allow for the additional time needed to draft and finalize a Joint Proposal (JP). The requested postponement was granted and a new schedule was adopted that established dates for filing the JP along with a summary thereof, submitting initial and responsive testimony and exhibits supporting or opposing the JP, and conducting an evidentiary hearing.

A JP was filed on September 2, 2016. Initially, the JP was executed only by Suez and Staff. The Rockland Business Association and Jan Degenshein, *pro se*, later executed signature pages and otherwise noted their support for the JP.<sup>6</sup> Suez and Staff filed testimony and exhibits supporting the JP, while testimony and exhibits opposing the JP were filed by the County of Rockland, the Task Force, the Municipal Consortium and Sierra Club Atlantic Chapter (jointly), the Municipal Consortium (individually), Rockland County Solid Waste Management Authority

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<sup>5</sup> 16 NYCRR §3.9(a)(2). The settlement team attended most of the negotiation sessions. In addition, the settlement team (and, in particular, the settlement ALJ) was available to provide assistance upon request to any interested party.

<sup>6</sup> Requests for party status and signature pages in support of the Joint Proposal were filed on September 20, 2016, by the Rockland Business Association and Jan Degenshein (*pro se*); their requests for party status were granted on the first day of the evidentiary hearing (Tr. 5-8).

and the Towns of Clarkstown, Haverstraw, and Stony Point (jointly, as "Municipal Intervenors"), PULP, Robert Tompkins, and Bruce Levine.<sup>7</sup>

Pursuant to a notice issued on September 8, 2016, an additional public statement hearing was held at the Rockland County Office Building located in New City on September 29, 2016. Over 50 people spoke at the public statement hearing that was held before Commissioner Burman and the litigation judge. Approximately 160 people were in attendance. The comments that were made at the public statement hearings, along with comments that were submitted by other means, are summarized below.

An evidentiary hearing was conducted over four days, on October 5, 6, 7 and 27, in Albany, New York. The resulting evidentiary record includes a transcript of over 1,500 pages and more than 80 exhibits. Initial post-hearing briefs were submitted by Suez, Staff, Municipal Intervenors, the Municipal Consortium, Robert Tompkins, Bruce Levine, and PULP. In addition, Scenic Hudson, Inc., and Riverkeeper, Inc., filed a joint brief joined by PULP, the Task Force, Sierra Club Atlantic Chapter, Sierra Club Lower Hudson Group, and the Municipal Consortium. Post-hearing reply briefs were filed, individually, by Robert Tompkins (*pro se*), Bruce Levine (*pro se*), Staff, Municipal Intervenors, the Task Force, Suez, the Municipal Consortium, and PULP, while Scenic Hudson and Riverkeeper filed another joint brief, again joined by PULP, the Task Force,

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<sup>7</sup> In lieu of filing testimony and exhibits in opposition to the Joint Proposal in September, Mr. Levine relied on the testimony and exhibits he had previously filed in July (Tr. 529-543).

Sierra Club Atlantic Chapter, Sierra Club Lower Hudson Group, and the Municipal Consortium.<sup>8</sup>

NOTICE OF PROPOSED RULE MAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rulemaking was published in the State Register on June 29, 2016 [SAPA No. 16-W-0130P1].

SUMMARY OF PUBLIC COMMENTS<sup>9</sup>

The topic most frequently raised and the proposal most vigorously contested by commenters is recovery by the Company of costs and expenses associated with the Haverstraw Water Supply

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<sup>8</sup> We note that Rockland County filed a letter in lieu of a reply brief that refers the reader to the testimony and cross-examination of its expert witness. Among other things, the testimony and associated cross-examination is well in excess of the 20-page limit for reply briefs (Tr. 1119). As a result, the letter is not an acceptable surrogate for a reply brief.

<sup>9</sup> Speakers and commenters included State Senator David Carlucci; State Assembly Members Ellen C. Jaffee, Kenneth Zebrowski, Jr., and James Skoufis; Rockland County Legislators Alden Wolfe (Chair), Douglas Jobson, and Harriet D. Cornell; County Executive Edwin J. Day; Clarkstown Town Supervisor George Hoehmann; Haverstraw Town Supervisor Howard Phillips; Stony Point Town Supervisor Jim Monaghan; Orangetown Town Supervisor Andrew Stewart; Rockland County Environmental Management Council Chair Natalie Patasaw; Ramapo Organized for Sustainable and Safe Aquifers Director Deborah Munitz, members and officials of several voluntary organizations; and several parties. In fact, several parties filed comments and spoke at the public statement hearing instead of (and sometimes in addition to) filing testimony and/or briefs. Speakers sometimes made multiple statements and provided copies of their statements for posting in DMM. Several commenters submitted written comments on multiple occasions. This section summarizes comments submitted by email, in writing and by telephone. While we have considered all relevant comments, including those filed by parties, comments submitted by parties are not separately identified. Written comments and transcripts of public statements appear in their entirety on the Department's website.

Project (HWSP). Other issues that engendered significant concern and comment include the need for a robust and innovative Conservation and Efficiency Program and for the Company to better control and manage the water supply and system, especially with respect to significantly reducing levels of non-revenue water (i.e., leaks). There were also numerous instances where the public expressed the need and desire for improved customer service and improved relations between the Company and its customers. Another topic of concern expressed by some members of the public is the quality of the water supplied by Suez.

In the comments and statements submitted prior to the filing of the JP, commenters almost unanimously opposed Suez's requested rate hike. Almost all of the comments oppose allowing the Company to recover HWSP costs. Most commenters took issue with the fact that much of the increase was attributable to the Company's request to recover HWSP costs. Commenters state that Rockland County residents vehemently opposed the Project and successfully fought against it. Most commenters analogize the request for recovery of such costs to a public bailout. They question why they should be required to pay for what some view as the Company's mistake and others describe as a result of Company mismanagement and incompetence.

Many assert that Suez was motivated by greed and therefore should not be allowed to profit from its decision to invest in the proposed desalination project. A few suggest that if any recovery is allowed, then the interest rate should be much less than what the Company proposed and recovery period should be shorter. Others state that the Commission, as the regulator and entity charged with protecting the public, must say no to this request. They say it would be unfair to require

ratepayers to pay for a project that they neither wanted nor needed.<sup>10</sup>

Commenters also oppose the requested increases, saying that the Company should not be allowed to raise rates unless it first fixes water quality and service. Many commenters said that the Company's record of repairing leaks and replacing mains is lackluster, at best. Others say they are paying for water that they do not drink, noting that they either need in-house filters or must purchase bottled water because the water has a bad smell and taste. Some commenters questioned the water's safety due to its unpleasant smell, taste, and color, and due to concerns that the water delivered by Suez contains excessive levels of trihalomethane. At least one commenter said that if one must pay for water, the water should be "pristine."

Several commenters argued that water rates were already too high, stating that seniors or other people that are on fixed incomes cannot afford any increase. Some commenters expressed the belief that the Company's past decision to switch to monthly billing from quarterly billing and differential summer/winter rates were just means of increasing rates and making water service more expensive. Others questioned why the proposed rate increase was so far in excess of the rate of inflation and why such increases were not tied to the utility's cost-effectiveness or to its performance.

A large number of commenters took issue with the Company's conservation plan, saying it needs to be strengthened. They state it was designed to achieve a "minimum" level of 1 MGD ordered by the Commission, adding that a 1 MGD level is too low. Some believed that double that amount of water could be saved by fixing leaks. Several commenters felt that the Company's

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<sup>10</sup> A few commenters suggest that the Commission's oversight of the HWSP should have been better.

conservation plans employed an expensive "cookie-cutter" approach to incenting water conservation. They state that all new major programs should be accompanied by cost/benefit analysis and they urge that the full potential of demand reduction - conservation, efficiency and leak repair - be tapped before pursuing any expensive new supply sources. Others say that the Company should offer incentives to high-use residential and commercial customers to reduce water use and should include, in its plans, distributed water sources like grey water reuse and rainwater harvesting. Several commenters, though supportive of conservation rates, oppose the proposed rate design changes saying that the proposed multi-tiered structure is flawed and requires additional study.

In early July 2016, we received a letter signed by NYS Senator David Carlucci, NYS Assembly members Ellen Jaffe, James Skoufis, and Kenneth P. Zebrowski, Rockland County Executive Edwin Day, Rockland County Legislator Harriett Cornell, Town Supervisors Andrew Y. Stewart (Orangetown), George Hoehmann (Clarkstown), and Jim Monaghan (Stony Point), Stony Point Councilman and Deputy Supervisor Tom Basile, Council members Karl Javenes (Stony Point), Adrienne D. Carey (Clarkstown), Stephanie Hausner (Clarkstown), Tom Diviny (Orangetown), and Gerald Bottari (Orangetown), and Mayors Marshal F. Katz (Wesley Hills) and Robert R. D'Amelio (West Haverstraw). They asked that we reject any surcharge for HWSP cost recovery and that we ensure fair and affordable rates for their constituents. While they welcomed Suez's conservation plan, they stated that we should require it to include the strongest cost-effective plans for leak reduction and conservation. They also called upon us to provide more expansive oversight, coupled with a commitment of technical and administrative resources dedicated thereto. They urge us to ensure and support forward-looking water policy.

As noted above, an additional public statement hearing was held and additional comments were sought after the JP was filed. Roughly 200 additional written comments were submitted during this period. Almost all the comments submitted by email, in writing, or by phone and the majority of public statements urge the Commission to reject the JP, saying that it is not in the public interest for the reasons summarized above. We also again received letters from NYS Senator Carlucci, NYS Assembly members Jaffe and Zebrowski, opposing recovery of HWSP costs, and calling for strong leak reduction plans and model conservation plans. In a December 6<sup>th</sup> letter, Senator Carlucci conveyed his constituents' complaints about poor water quality, asking that the Commission work with Suez to offer a credit to consumers that were adversely affected and financially burdened by such issues.

At the September 29<sup>th</sup> public statement hearing, 54 speakers opposed the Joint Proposal, while a small number (about 7) expressed support for the JP. Those that did express support for the JP characterized the proposed rate increases as a reasonable compromise and viewed the focus on infrastructure improvements and on conservation efforts as steps that are necessary and appropriate.

We welcome the input that we have received. We have carefully considered all relevant comments, and are modifying the JP to address concerns by adding certain requirements to the rate plan that we are adopting for Suez. For example, we will require additional measures to be undertaken by the Company to more effectively monitor and address water quality issues. In addition, we are modifying the proposed treatment of HWSP costs, the structure of the Conservation Program Incentive Mechanism, the level at which water production costs will be reconciled to promote leak reductions, and the scope of the System Improvement Charge. We also are requiring analysis of direct install as a

component of the proposed low-income rebate program that Suez will be developing. These and other modifications should address several of the issues and concerns that were articulated by those that participated in our public outreach efforts and in our rate case process, thereby achieving a more balanced and reasonable rate plan going forward.

PROPOSED RATE PLAN<sup>11</sup>

Term and Rates

The JP provides for a three-year rate plan that would begin on February 1, 2017, and continue through January 31, 2020.<sup>12</sup> Following the expiration of this plan, however, the terms and provisions would continue until changed by order of the Commission.<sup>13</sup>

The proposed rate plan would increase base rates in each of the three rate years, however, the agreed-upon increases would be spread out over the rate plan's three-year term, reducing the rate increase that would otherwise be required in

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<sup>11</sup> In the following discussion, some terms of the Joint Proposal, along with any issues related thereto, are generally summarized and discussed. The summary is provided for the reader's convenience.

<sup>12</sup> As defined herein, a rate year spans the twelve month period that starts on February 1 and ends on January 31. Thus, Rate Year One is February 1, 2017 - January 31, 2018; Rate Year Two is February 1, 2018 - January 31, 2019; and Rate Year Three is February 1, 2019 - January 31, 2020.

<sup>13</sup> JP §IV.1. Some proposals would exceed a three-year timeframe. These include, for example, the amortization periods for recovering forecasted tank painting and Haverstraw Desalination Project expenses (18 and 15 years, respectively), the Conservation and Efficiency Program's duration and evaluation period (five years), and the roll-out of Advanced Metering Infrastructure (four years).



Rate Year One.<sup>14</sup> This approach would result in base rate increases of \$5,033,706 each rate year, which translate to percentage increases of 5.9%, 5.6% and 5.3% for Rate Year One, Two and Three, respectively.<sup>15</sup>

#### Rates of Return and Sharing Mechanism

The revenue requirements for all three years of the proposed rate plan are based on a capital structure with a 46% equity ratio and a 9.0% ROE.<sup>16</sup> Pursuant to the JP's earnings sharing mechanism (ESM), Suez will retain the first 65 basis points of excess earnings before any sharing occurs. The next 100 basis points will be shared equally between ratepayers and shareholders, and 90% of any earnings in excess of 10.65% will go to ratepayers (with the Company retaining 10%). The earnings calculation will be done on a three-year cumulative basis, and the common equity used in the calculation will be the lesser of the Company's actual ratio or 46%.<sup>17</sup> Any earnings shared with the customers would earn interest at the Commission-determined other customer capital rate then in effect beginning July 31, 2018 (i.e., at the mid-point of the three-year Rate Plan). Interest would be earned on the net-of-tax balance that will continue unless and until any over-earnings are fully passed back to customers.

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<sup>14</sup> The agreed-upon base rate increases in total operating revenues in percentage and dollar terms for each of the three rate years otherwise would be as follows: \$7,691,533 or 9.07% for Rate Year One; \$1,966,434 (2.12%) for Rate Year Two; and \$3,300,393 (3.47%) for Rate Year Three.

<sup>15</sup> JP §IV.6.

<sup>16</sup> JP §V.2.

<sup>17</sup> JP §V.3.

Rate Base Construction Projects

A list of anticipated construction projects for each rate year is set forth in JP Appendix 5. The costs associated with these capital investments (about \$25.3, \$31.7, and \$33.5 million in Rate Years One, Two, and Three, respectively) would be included in base rates.

Haverstraw Water Supply Project Costs

The Commission previously determined that the Company was allowed to request to transfer the HWSP costs from Construction Work in Progress (account 107) to Miscellaneous Deferred Debits and to seek recovery of such costs, subject to providing with its request the specific amounts broken into the costs approved by the Commission in November 2014 and the costs not yet reviewed or approved.<sup>18</sup> For the latter category of costs, detailed support was required.<sup>19</sup> In addition, an updated allowance for funds used during construction (AFUDC) calculation through December 31, 2015 was required along with a proposed amortization period.<sup>20</sup> The Company included as part of its February 2016 rate filing a request to recover all outstanding HWSP costs and a proposed amortization period. The JP would allow for the recovery of such costs, amortized over 15 years, subject to modification, on a prospective basis only and only after the three-year term of the rate plan, if such modification is mandated as a result of a final judgment on the pending CPLR

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<sup>18</sup> Case 13-W-0303, Proceeding on Motion of the Commission to Examine United Water New York, Inc.'s Development of a New Long-Term Water Supply Source, Order Adopting Alternative Demand/Supply Strategies and Abandoning Haverstraw Project (issued December 18, 2015) (Abandonment Order) at 20 and Appendix.

<sup>19</sup> Case 13-W-0303, *supra*, Abandonment Order, Appendix.

<sup>20</sup> Id.

Article 78 action challenging the Commission's decision in the Order in Rehearing in the Surcharge Case.<sup>21</sup>

### Reconciliations

The proposed plan also would include a revenue, production cost and property tax cost reconciliation adjustment clause (Revenue Adjustment Clause). The Revenue Adjustment Clause would be employed to refund or recover variances between the specified target levels and actual levels of metered revenues, property taxes and production costs (up to an 18% non-revenue water threshold level)<sup>22</sup> associated with purchased water, power and chemicals. Revenue variances would be recovered or refunded annually through a surcharge or credit to be applied to all metered customers' bills. The reconciliations and an associated report will be submitted annually to the Commission 60 days after the end of each rate year. The proposal specifies that the Revenue Adjustment Clause and all administrative provisions related to it would continue beyond the rate plan's three-year term, at Rate Year Three target levels.<sup>23</sup>

Forecasted property tax expenses represent about 24% of the Company's Rate Year One revenue requirement. For each rate year, 85% of the variance between forecasted and actual property tax expense will be included in the Revenue Adjustment Clause while the other 15% will either be absorbed or retained by the Company.

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<sup>21</sup> Case 13-W-0246, Verified Petition of United Water New York Inc. for Implementation of a Long-Term Water Supply Surcharge, And Related Tariff Amendment, Order on Rehearing (issued February 25, 2016). The pending court case is County of Rockland v. Public Service Commission, Albany County Supreme Court, Index No. 03496-16.

<sup>22</sup> See Suez Initial Brief at 18, for commitment to reconcile production-related costs up to an 18% NRW level.

<sup>23</sup> JP §IX and Appendix 6.

The sale of property and filing for economic or functional obsolescence are not actions that would trigger any potential sharing. In addition, property tax refunds would not be included in the Revenue Adjustment Clause. Instead, upon receipt of property tax refunds, the Company will continue to notify the Commission, in accordance with Public Service Law §113(2) and 16 NYCRR §89.3. Between the time of their receipt and disposition, interest on the customer portion of the property tax refunds would accrue at the other customer capital rate established by the Commission.<sup>24</sup>

Non-Revenue Water

In accordance with 16 NYCRR §503.8(b), the JP expressly continues the requirement that the Company provide a detailed report to the Commission any time that total non-revenue water (NRW) is greater than 18% over a given calendar year. This report will include any significant events that impact NRW and specific measures being taken to reduce NRW to acceptable levels, and will provide a breakdown of NRW into unbilled authorized use, apparent losses, and real losses.<sup>25</sup> It also will specifically identify the major drivers of NRW and identify which type of NRW is being addressed by the specific

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<sup>24</sup> JP §XI.

<sup>25</sup> Apparent losses consist of unauthorized consumption (theft & illegal use), as well as inaccuracies associated with production and billing metering. Real losses consist of physical water losses from the system up to the point of customer consumption, and includes unavoidable real losses (aka "UARL" or normal background leakage); potentially recoverable real losses (burst, joint, or outside service leakage); storage facility overflows; and un-metered customer service line leaks (or inside service leaks). Hearing Exhibits 28 at 2 and 29 at 14.

measures the Company is taking to reduce NRW. Finally, a copy of the Company's annual water audit would accompany the report.<sup>26</sup>

To facilitate NRW reductions, the Company will increase its T&D main replacement rate from 1.0% replacement annually by 2020,<sup>27</sup> subject to a \$17 million cap; install Advanced Metering Infrastructure (AMI); and implement District Meter Areas (DMAs).<sup>28</sup> The AMI roll out would occur over a four-year period, while the implementation of DMAs should be completed by 2019. Once AMI is operational, the Company will work with Staff to develop a demonstration project to measure the water savings from the installation and usage feedback provided by AMI and the reduction in NRW. By the end of Rate Year One, the Company will submit a report to Staff that, among other things, would summarize the type of feasibly obtainable data that would demonstrate the impact of: 1) water savings due to AMI; and 2) the various projects aimed at reducing NRW.<sup>29</sup>

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<sup>26</sup> JP §X.

<sup>27</sup> Since 2007, Suez had replaced or rehabilitated approximately 23 miles of mains as part of its infrastructure renewal program, a figure that represented about 0.24% of the system on average per year during that time period. Hearing Exhibit 1, Graziano Testimony at 12.

<sup>28</sup> AMI is an integrated system of smart meters, communications networks, and data management systems that will allow the Company to monitor and manage water distribution and delivery to customers by continuously collecting data transmissions from customer billing meters and compute usage on a near real-time basis. DMAs are a method to break the distribution system into smaller metered districts (between 1,500 and 5,000 connections per DMA) in order to perform mass balancing which determines how much water went into the area, how much was registered at individual meters, and how much is NRW. AMI and DMAs provide long-term methods to reduce NRW by increasing data granularity. Hearing Exhibit 28 at 2.

<sup>29</sup> Id.

In addition to the AMI and NRW efforts, the Company's tariff revisions would include "willful waste of water" language that would authorize the Company to discontinue supply to customers that fail to make necessary repairs to leaking pipes.<sup>30</sup>

Pensions and Other Post-Employment Benefits<sup>31</sup>

This section of the JP expressly states that the Company remains subject to the Commission's Statement of Policy and Order Concerning the Accounting and Ratemaking Treatment for Pension and Postretirement Benefits Other Than Pensions<sup>32</sup> and specifies the rate allowances that are included as part of this rate plan.

Qualified New York Manufacturer Credit

The New York State Department of Taxation and Finance's determination that the Company is a Qualified New York Manufacturer resulted in a regulatory liability for the benefit of Suez's customers of roughly \$8.5 million and a current 0% state income tax rate for the Company. The JP provides that the \$8.5 million will be utilized to reduce the proposed rates and

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<sup>30</sup> JP §XI.6 and Appendix 3. The proposed tariff language reads: Willful waste or use of water through improper and imperfect pipes, or by another means. Whenever leakage occurs on pipes and facilities owned by the customer, the customer shall make necessary repairs without delay. If the customer fails to make said repairs within a reasonable time, the Company reserves the right to discontinue the supply until such time as the leak is repaired and all costs incurred by the Company are paid. JP Appendix 3, p. 5 of 19.

<sup>31</sup> JP §XII.

<sup>32</sup> Case 91-M-0890 - In the Matter of the Development of a Statement of Policy Concerning the Accounting and Ratemaking Treatment for Pensions and Postretirement Benefits Other than Pensions, Statement of Policy Concerning the Accounting and Ratemaking Treatment for Pensions and Postretirement Benefits Other than Pensions (issued September 7, 1993).

will be amortized over three years, beginning with the first month that rates become effective in this proceeding.<sup>33</sup>

System Improvement Charge

Pursuant to the proposed rate plan, the Company would be authorized to implement a System Improvement Charge (SIC) mechanism. The SIC mechanism would allow the Company to recover the carrying costs (i.e., return and depreciation expense) for specific capital improvement projects when those projects are put in service during the Rate Plan. The projects and the capital expenditures associated with each project that would be eligible for inclusion in the SIC are specifically identified in JP (at page 19). However, the JP provides that additional projects may be proposed at the time the Company files for recovery of approved, in-service projects.<sup>34</sup>

The Company must make a compliance filing with the Secretary to the Commission within 60 days after each project is placed in service. Also, the Company may update the SIC surcharge rate with an annual filing, to be made at least 90 days before the end of each rate year. The submitted surcharge would go into effect 60 days after submittal unless Staff submits a letter to the Company indicating that the surcharge should be adjusted. The Company would be entitled to assess a SIC surcharge on customers' bills based on a pretax rate of return of 9.05% applied to the net rate base increase plus annual depreciation expense.<sup>35</sup>

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<sup>33</sup> JP §XIV.

<sup>34</sup> JP §XVI.

<sup>35</sup> Id.

The SIC surcharge mechanism would remain in place until the Commission issues a decision in the Company's next rate case; at that time, costs previously collected through the SIC would be included and recovered in base rates, instead of being recovered in a SIC surcharge.<sup>36</sup>

#### Revenue Allocation and Rate Design

The proposals for revenue allocation and rate design are set forth in JP Appendix 7. The proposals reflect the replacement of the current seasonal rate structure with an inclining block rate structure, with rates constant throughout a single year. The single-family residential service class rate structure would move from two to three blocks consisting of the first 5 ccf, the next 7 ccf, and all usage over 12 ccf, with inclining rates for each block; the multi-family residential service class rate structure would move from two to three blocks consisting of the first 20 ccf, the next 380 ccf; and all usage over 400 ccf, with inclining rates for each block; and the non-residential service class rate structure would move from effectively one<sup>37</sup> to two blocks consisting of the first 900 ccf and all usage above 900 ccf, with inclining rates for each block. Also, for the single-family and multi-family service classes, the rate differential between blocks 1 and 2 would be designed so as not to exceed a maximum 50% of the rate differential between blocks 2 and 3. The Company's fixed/customer charges would be held constant, thus not increasing from current levels. Under the JP, the Company is incorporating its Cost of Service Study findings into its revenue allocation over three years.<sup>38</sup>

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<sup>36</sup> Id.

<sup>37</sup> The current rate design has a block for the first 3 ccf.

<sup>38</sup> JP §XVII.



The JP calls for the Company to provide a comprehensive service classification study in its next rate filing, and a proposed service classification reorganization, as necessary. It states that the cost of the study will be included in rate case expense. It adds that the comprehensive service classification study will address, among other things, whether the classification of multi-family customers into subclasses is necessary to ensure that the inclining block rate structure does not have any negative effects based on building type/size and the seasonality of industrial customers.<sup>39</sup>

Finally, the Company would be authorized to implement a "drought rate" that would be triggered when the County of Rockland Health Department or any other duly authorized government entity enacts mandatory county-wide water use restrictions due to drought that are applicable in that county of the Company's service territory. The drought rate will be an increase of 25% to the highest block rate for each service classification and the increase will appear on the customer's bill as a separate line item and will be billed on water usage after the start of the tariff drought rate. The increase in revenues resulting from adoption of tariff leaves containing a "drought rate" would be deferred for future use on the Company's conservation efforts, as determined by the Commission in the Company's next rate case.<sup>40</sup>

#### Conservation & Efficiency Program

The JP outlines the Company's commitment to implement a Conservation and Efficiency (C&E) Program consisting of four components: Rebates and Incentives; Outreach, Education and Audits; Use of AMI and Conservation-Oriented Rates; and

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<sup>39</sup> Id.

<sup>40</sup> Id.

Monitoring, Reporting, and Adjusting. The program's estimated cost over five years is \$5.2 million; however, only the first three years of C&E program costs are included in the rate plan's revenue requirement as set forth in JP Appendix 2. Per the JP, the final cost of the C&E Program would be determined based on the final program parameters and would be recovered by the Company in rates.<sup>41</sup>

Rebates would be offered by the Company to single-family, multifamily, commercial and institutional customers to promote the reduction of both indoor and outdoor water use. Some industrial customers may also be eligible for rebates, depending on the type of facility the customer operates. Rebates would be offered for WaterSense toilets, showerheads, pre-rinse spray valves, and urinals; ENERGY STAR® clothes washers; and irrigation rain sensor and smart controllers. The Company would develop specific criteria to adjust rebate levels and re-allocate program budgets, including a system of controls for rebate eligibility within six months of the implementation of the C&E Program. Estimated costs of the rebate programs would be included in the revenue requirement and any incremental costs related to such programs that exceed the cost estimates included in the revenue requirement either would be deferred for recovery in the Company's first SIC filing or its next rate case, at the Company's option.<sup>42</sup>

The Company will propose an outdoor water use workshop program involving customers and various experts selected by the Company to provide education on outdoor water use best practices. The workshop will include a free two-hour presentation for irrigation contractors to educate them on the conservation program and best practices. The estimated cost of

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<sup>41</sup> JP §XIX.

<sup>42</sup> JP §XIX.A.

this program is \$10,000 annually over five years. The Company also will develop and sponsor workshops and training programs for trade groups to ensure that they are specifying and installing low water use appliances and fixtures. The estimated cost of this component of the C&E program is \$37,000 (\$7,400 annually).<sup>43</sup>

In addition to the conservation education that the Company currently provides, the Company also will promote and increase awareness of its conservation programs via social media and collaboration with stakeholders, by developing case studies based on real data for Rockland County to demonstrate water and money savings potential, developing its website as a stakeholder resource for water conservation information, and offering water audits to customers and trade workshops to contractors. The active marketing of the rebate programs is estimated to cost \$25,000 annually; however, any unspent funds after the C&E program's five-year term would be deferred for ratepayer benefit.<sup>44</sup>

The Company's C&E Program will include communication with and education of municipal leaders. It will also include the translation of specific conservation forms identified by Staff, including the Do-It-Yourself Audit Instructions, rebate promotional materials, and related forms, into Spanish, Yiddish and Creole. Such forms would be made available upon request, up to the estimated cost of \$15,000 that is included in rates. The self-audit (Do-It-Yourself Audit) will be available on the Company's website or in hard copy upon request for those customers who do not own or have ready and free access to a computer. In addition, the Company will provide outreach materials targeted to low income customers regarding the rebate

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<sup>43</sup> JP §XIX (subsections B and C).

<sup>44</sup> JP §XIX.D.

program and the DIY audits. The materials will be distributed through the Suez Cares (or a similar) program and to organizations within the service territory that assist low income customers.<sup>45</sup>

The Company will submit a plan in Rate Year One to include comparative usage ratings among similar household types on the Company's website. It will track rebate redemption rates (to compare actual data to anticipated activity) and conduct a broad, random survey of the customer population mid-way through the conservation program to gauge customer reaction to the Company's plan, conservation-oriented rate structure, and the rebate program, and to ask fundamental questions designed to identify water usage characteristics. The Company will report semi-annually to Staff on rebate utilization levels, major findings, feedback, and any significant adjustments to the C&E Program. The C&E program would be structured to afford the Company the flexibility to change the rebate levels on products or change the levels of promotion or targeting for certain items.<sup>46</sup>

#### Low Income Rebate Program

The JP provides that the Company will solicit input from interested stakeholders to develop a rebate program targeting low income customers. Within six months after Commission approval of the proposed rate plan, the Company would provide its low income rebate program proposal to Staff. The proposal would address a method to identify low income customers; the proposed number of rebates and dollar amount per rebate, demonstrating that the dollar value of the rebate and associated water savings is cost-effective on a dollar per MGD

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<sup>45</sup> Id.

<sup>46</sup> JP §XIX (subsections E and F).

saved basis; and a proposed implementation timeline and total budget for the program. The Company's proposal would be posted in the Commission's Document and Matter Management (DMM) System and interested stakeholders would have an opportunity to file comments. The incremental budget for the low income program would be collected through the SIC mechanism, pending Staff's review, or, at the Company's option, deferred for recovery in the Company's next rate case.<sup>47</sup>

#### Conservation Program Incentive Mechanism

The Company would have an incentive mechanism for its C&E Program. After five years, actual water savings from the Company's rebate program would be evaluated against a baseline target of 1.0 million gallons per day (MGD) of actual water savings.<sup>48</sup> If actual water savings fall short of the 1.0 MGD target by 0.2 MGD or more the Company would incur a negative revenue adjustment but, if actual water savings exceed the 1.0 MGD target by 0.5 MGD or more, Suez would receive a positive revenue adjustment. Thus, Suez could incur a negative revenue adjustment that ranges from 5 basis points<sup>49</sup> to 45 basis points (i.e., 5 basis points at 0.8 MGD plus an additional 5 basis points for each 0.1 MGD increment below the 0.8 MGD negative revenue adjustment starting point). Conversely, starting at 1.5 MGD of actual water savings, the Company's positive revenue adjustment could range from 5 basis points up to a maximum of 63 basis points for achieving over 2.0 MGD.<sup>50</sup> Any negative or

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<sup>47</sup> JP §XXII.

<sup>48</sup> Actual water savings are defined as equaling the number of rebates redeemed multiplied by the assumed water savings per rebate for each rebate type. JP §XX.4 and JP Appendix 8.

<sup>49</sup> Ten basis points is equivalent to approximately \$255,800 in revenue requirement based on Rate Year Three rate base.

<sup>50</sup> JP §XX.

positive revenue adjustment or incremental rebates will be addressed through the SIC mechanism.

Customer Service Performance Incentive Mechanism

The proposed CSPI consists of the current Customer Satisfaction Survey mechanism and would start at the target that was set by the Commission in Case 13-W-0295. It would be established in Rate Year One and continue until modified by the Commission.

For each rate year, the Company will retain a consultant to survey overall customer satisfaction levels and customers' opinions about Suez's response to specific issues. If customer satisfaction scores fall below the target, the Company could incur potential negative revenue adjustments ranging from \$100,000 up to a maximum of \$300,000.<sup>51</sup>

Miscellaneous Provisions

The JP also contains the following:

- (1) Statement that when any changes in revenue taxes take effect, the Company will file an amended tariff for changing rates immediately to allow for recovery of the revenue taxes.<sup>52</sup>
- (2) A provision requiring the Company, going forward, to utilize the methodology set forth in its Cost Allocation Manual to calculate and allocate Management and Service fees.<sup>53</sup>

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<sup>51</sup> JP §XXI. Suez, however, would have an opportunity to demonstrate why an equity return adjustment should not be applied if an adjustment is alleged to be warranted on the basis of the survey data. JP §XXI.6.

<sup>52</sup> JP §XIII.

<sup>53</sup> JP §XV.

- (3) A list of all required reporting requirements and compliance filings, along with their due dates.<sup>54</sup>
- (4) A provision requiring the Company to file the tariff revisions identified in JP Appendix 3, and expressing the signatories parties' proposal that such leaves and statements would be allowed to go into effect on a permanent basis.<sup>55</sup>
- (5) Provisions outlining the various legislative, regulatory and related actions that could warrant a deferral petition, specifically noting that deferrals of costs related to changes in New York State's income tax rates will be required and will not be subject to a materiality requirement for deferrals.<sup>56</sup>
- (6) Suez's agreement to refrain from filing a rate case in which rates would go into effect before February 1, 2020, unless temporary rate relief pursuant to Public Service Law §§89-j and 114 is necessary to preserve the Company's financial integrity.<sup>57</sup>
- (7) Statements (a) that minor or *de minimis* changes may be necessary and may be sought during the rate plan's term; (b) of the Commission's reserved authority to require or permit a change in rates if there are circumstances that, in the judgment of the Commission, threaten Suez's economic viability or ability to maintain safe, reliable and adequate service or if, in the Commission's opinion, there are unforeseen circumstances that have such a substantial impact on

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<sup>54</sup> JP §XXIII and Appendix 9.

<sup>55</sup> JP §XXIV.

<sup>56</sup> JP §XXV.

<sup>57</sup> JP §XXVI.

the range of earnings levels or equity costs envisioned by this Proposal as to render Suez's rates unjust or unreasonable or insufficient for the provision of safe and adequate service;<sup>58</sup> and (c) that no provision of the JP or the Commission's adoption of any of the terms of the JP thereof shall in any way abrogate or limit the Commission's statutory authority or impact the rights and responsibilities of either the Commission or Staff.<sup>59</sup>

- (8) A proposed process for how disputes regarding the interpretation of the JP or implementation of any of the provisions of the JP should be resolved.<sup>60</sup>
- (9) Provisions expressing the various agreements and understandings made by and shared among the signatories.<sup>61</sup>

#### DISCUSSION

When setting rates for water service, the Commission's task is to ensure that the utility company will furnish facilities and provide service that shall be safe and adequate, the just and reasonable cost of which is to be charged to ratepayers in a manner that is without undue discrimination or unreasonable preferences [N.Y. Pub. Serv. Law § 89-b]. The litigation model for establishing such rates is often necessary, but there also are many advantages to pursuing negotiated settlements in proceedings before the Commission. Among the many advantages is the opportunity for innovation in the regulation of utilities such as the ability to fashion broadly-

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<sup>58</sup> JP §XXVII.A.

<sup>59</sup> JP §XXVII.F.

<sup>60</sup> JP §XXVII.D.

<sup>61</sup> JP §XXVII subsections A.4, A.5, B, C, E, F, H, and I.



accepted multi-year rate plans and incentive mechanisms that focus the utility company on providing better long-term service rather than on annual litigation.

When the Commission is presented with a Joint Proposal by the utility company and one or more parties, it must determine whether the rate plan jointly proposed will result in safe and adequate service at just and reasonable rates. In making such a determination, the Commission's settlement guidelines provide for the Joint Proposal to be reviewed to determine whether it achieves a balance among the protection of the ratepayers, fairness to investors, and the long-term viability of the utility, is consistent with sound environmental, social and economic policies of the Commission and the State, and produces results that are within the range of the likely results of a fully litigated proceeding. Moreover, in judging the Joint Proposal, the Commission also typically gives weight to the fact that it reflects agreement by normally adversarial parties.<sup>62</sup>

In this instance, the Commission recognizes that many parties strongly oppose the JP. In light of the breadth of opposition, the Commission is giving little special weight to the JP in this case. Rather, the Commission has reviewed the terms of the JP and the evidence in the record and has applied its own judgment and experience to conclude that as filed, the JP is not reasonable. Instead, as discussed in more detail below, the Commission is requiring modifications and additions to the terms of the JP, and it is only with these modifications and additions does the Commission approve a modified rate plan

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<sup>62</sup> Case 90-M-0255, Proceeding on Motion of the Commission Concerning its Procedures for Settlement and Stipulation Agreements, Opinion, Order and Resolution Adopting Procedures and Guidelines, Opinion 92-2 (issued March 24, 1992), Appendix B, p. 8.

as reasonable. Specifically, the Commission is concluding that the modified rate plan ensures safe and adequate service at just and reasonable rates in accordance with the Public Service Law, and reasonably balances the ratepayers' and investors' interests, complies with relevant public policy, and achieves a result that is comparable to a litigated result. Among other things, the rate plan the Commission is adopting resolves the contentious issue of rate recovery associated with the Haverstraw Water Supply Project and establishes a rate plan for a multi-year period that promotes regulatory stability and facilitates a levelizing of rates over the three-year term. It also ensures that the Company has the necessary funds to invest in and improve distribution mains, implement the roll-out of AMI, and install DMAs, all steps that should allow for a better managed and more secure water system, benefiting the customers served by Suez. With respect to improving system mains, it should be highlighted that the program being approved is much more aggressive - - going from an existing infrastructure renewal program that rehabilitated or replaced about 0.24% of the system, on average per year, and an initial Company proposal to accelerate the pace to achieve a replacement rate of 0.7% by 2021 - - to a program that will target a 1% main replacement rate by 2020.<sup>63</sup> And, it includes a leak reduction and conservation plan designed to reduce production demand by over 3.0 MGD, which is something the Commission previously encouraged the Company to develop.

The elements of the approved rate plan including modifications and additions are discussed in more detail below.

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<sup>63</sup> See Hearing Exhibit 1, Graziano Testimony at 12, and Tr. 43.

Rate Levels

As noted above, many argue that Suez should be denied any increases. The main reasons are: 1) the increases are driven largely by the Company's request to recover the costs associated with the HWSP, for which many argue there should be no or much more limited recovery, 2) increases are not affordable, especially to those with low or fixed incomes, and 3) the Company has not and does not provide the quality of water or service that warrants an increase. Several of the parties put forth proposals for further reducing the level of increases.

The JP's terms provided for a three-year rate plan, with increases each rate year. Without levelization, the increases would be \$7,691,533 or 9.07% for Rate Year One; \$1,966,434 (2.12%) for Rate Year Two; and \$3,300,393 (3.47%) for Rate Year Three. With levelization and a three year amortization of the Qualified New York Manufacturer credit, the proposed base rate increases are \$5,033,706 each rate year, which translate to percentage increases of 5.9%, 5.6% and 5.3% for Rate Year One, Two and Three, respectively.

The Commission is also concerned with service, rate and bill impacts that would ensue if the JP's terms were adopted without modification. Therefore, in addition to adopting the proposals to levelize and moderate the increases, the Commission has also adopted other proposals that are intended to better balance the Company and ratepayers' interests by placing more reasonable limits on future recoveries and expenditures and by establishing goals for Suez that will prompt the Company to proactively develop cost-effective approaches to meeting its continuing obligation to provide safe and adequate service at just and reasonable rates. In addition to levelization, the multi-year rate plan will ensure customer rate stability for the three-year period and will encourage improved service through

regulatory incentives that could not be achieved in a one-year period. As a result of the changes the Commission is making to the regulatory treatment of HWSP costs, discussed in more detail below, the base rate increases provided under the modified three-year rate plan are \$4,873,667 each rate year, which translate to percentage increases of 5.8%, 5.5% and 5.2% for Rate Year One, Two, and Three, respectively.

The Commission considered Mr. Tompkins' argument that the \$8.5 million Qualified New York Manufacturer credit should be applied to offset the HWSP balance. The Municipal Consortium however argues against this suggestion because it says the loss of that credit to the income statement would impose unacceptably higher rate increases. The Municipal Consortium agrees that the credit should be returned to ratepayers over three years, consistent with the JP's approach. PULP argues that more of the Qualified New York Manufacturer credit should be used to mitigate the first year revenue requirement. The Commission is not persuaded that any of these alternative Qualified New York Manufacturer proposals is preferable to the existing proposal to spread the credit out over three years which has the benefit of moderating the rate increases. Annual revenue increases are necessary as they will provide the funds for essential infrastructure improvements and maintenance, further roll-out of AMI and DMAs, and to begin implementing a conservation and efficiency program. The Commission notes that these actions are vital to enabling the Company to more proactively address its customers' legitimate concerns regarding the need for leak repair, conservation, and more efficient use of water in Rockland County.

#### Haverstraw Water Supply Project

The task before the Commission at this juncture regarding the HWSP is to determine how the costs previously

determined to be prudent are to be recovered in rates. It is not a question of whether to allow for cost recovery in rates; it is only a question of when and in what manner. While several parties and numerous commenters urge a re-examination of the underlying costs, the Commission is not persuaded by any of the arguments made that there are the necessary demonstrated new facts or a significant change in circumstances that would warrant reconsideration. Significant amounts of time and resources already have been devoted to reaching these determinations in two separate dockets.<sup>64</sup> The Commission already has determined that the Company's decisions to select and pursue the HWSP were made at a time when local officials and the Commission were expressing great concern about the security of future water supply. Largely as a result of a dramatic change in the timing of need for a significant long-term water supply source, the Commission ordered Suez to abandon pursuit of the HWSP and pursue an alternative strategy. After extensive review in two inter-related proceedings, the Commission determined that Suez's selection and pursuit of the HWSP at the time those decisions were made was not imprudent and, after making several adjustments to exclude roughly \$8 million of development costs, indicated that the Company should seek recovery of the remaining prudently-incurred HWSP costs. The Commission also instructed the Company, after abandonment, to file a deferral petition to "transfer Project costs from Construction Work in Progress (account 107) to Miscellaneous Deferred Debits (account 186)."<sup>65</sup>

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<sup>64</sup> Thus, we will not entertain in this proceeding arguments that were unsuccessfully asserted in the Surcharge Case (Case 13-W-0246, *supra*) and in Case 13-W-0303 (See, *e.g.*, Municipal Consortium's IB at 10, note 5; and see Suez IB at 24, note 74).

<sup>65</sup> Case 13-W-0303, *supra*, Order Adopting Alternative Demand/Supply Strategies and Abandoning Haverstraw Project, issued December 18, 2015 (Abandonment Order), at 20.

Therefore, the Commission declines to revisit its prior determinations that (1) the Company's decision to select and pursue the HWSP was prudent and (2) the Company should seek to recover such costs.

In lieu of filing a separate petition, the Company sought deferral treatment and recovery of expenses related to the HWSP in this rate case. After Staff's review, audit, and adjustment of the expenses, and the negotiation of the JP, the Commission is asked to approve the recovery by the Company of approximately \$53.678 million of HWSP costs over the next 15-year period and provide a return on the net-of-tax amount (\$34 million). To address the outstanding and as yet unrecovered HWSP costs and the interest that will be accumulating on those unrecovered costs, the JP proposes to begin allowing for their recovery in rates. The proposed recovery of HWSP costs is the main driver of this rate increase request.<sup>66</sup> But this is the first time that the ratemaking treatment of the HWSP costs is before the Commission. The Commission has considered relevant arguments concerning the prospective rate treatment of such costs in light of the particular facts and circumstances presented in this case and applicable precedent.

Several parties, including Municipal Intervenors, the Municipal Consortium, Mr. Tompkins, and PULP, along with many public commenters, argue that the Commission should not adopt the JP's HWSP rate proposals. In the first instance, Municipal Intervenors, the Municipal Consortium, Mr. Tompkins, and PULP argue that there should be no recovery of HWSP costs as they

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<sup>66</sup> Under the non-levelized option, about \$6.7 million of the proposed Rate Year One increase of \$7.6 million (or \$10.9 million, before accounting for the pass back of the \$3.3 million Qualified New York Manufacturer credit) is attributable to the recovery of HWSP costs. Tr. 843 and Hearing Exhibit 26.

contend that the JP's treatment of HWSP costs is neither fair nor reasonable. Municipal Intervenor assert that, by providing for the full rate recovery of an abandoned project as if it were an expense item, the Company is better off than if the Project had actually gone into service because it is guaranteed full recovery plus a return on the rate base portion of the Project.<sup>67</sup> Municipal Intervenor and the Municipal Consortium claim that adopting the JP's HWSP terms would provide a disincentive to the Company and to other utilities to control future pre-construction costs.<sup>68</sup>

Municipal Intervenor insist that the prudence of the HWSP should not automatically translate into full recovery. Municipal Intervenor say it is still the Company's investment and, as such, the risk thereof should always rest on the investor, not the ratepayer. To avoid placing the HWSP investment risk on ratepayers, Municipal Intervenor claim that the Company should not be entitled to any recovery of HWSP costs, even when prudently incurred, unless it can be shown to impact the long-term financial health of the Company and, according to Municipal Intervenor, no such showing has or could be made here.<sup>69</sup> Municipal Intervenor and others also assert that there should be no recovery of HWSP costs because of Rockland County's pending court challenge.<sup>70</sup>

Municipal Intervenor state that, in the Surcharge Case, the Commission merely held that the costs were eligible for recovery but did not guarantee a full recovery plus profit. Municipal Intervenor assert that the Commission has discretion

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<sup>67</sup> Municipal Intervenor IB at 7.

<sup>68</sup> Municipal Intervenor IB at 8; Municipal Consortium IB at 12.

<sup>69</sup> Municipal Intervenor IB at 9.

<sup>70</sup> Municipal Intervenor IB at 2, 6, 10.

to permit partial recovery of investment in a subsequently abandoned facility and is empowered by statute to "deny utilities recovery of prudent costs."<sup>71</sup>

The Municipal Consortium contends, in relevant part,<sup>72</sup> that there should be no recovery of HWSP costs because the "majority" of the HWSP invoices that were submitted by the Company violated the Uniform Systems of Accounts requirement that they include a description of the services provided.<sup>73</sup> PULP argues that, given the "flawed conservation plan and incentive mechanism" and the Company's "reluctance to work collaboratively with the [Task Force]," allowing recovery of the HWSP costs is "especially misguided public policy and compelling grounds for rejecting the JP."<sup>74</sup>

If the Commission permits HWSP cost recovery, Municipal Intervenors and the Municipal Consortium both argue that HWSP costs should be amortized over 20 years, instead of 15 years.<sup>75</sup> Municipal Intervenors and the Municipal Consortium claim that use of a shorter amortization period benefits shareholders, but not ratepayers, as shareholders get a faster

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<sup>71</sup> Municipal Intervenors IB at 7, citing Abrams v. Public Service Commission, 67 N.Y. 2d 205 (1986) (Abrams), at 217-218, for the statement that the "PSC does have the discretion under Hope Gas Co. to permit no more than a partial recovery of investment in a subsequently abandoned facility") and also citing Energy Association v. PSC, 169 Misc. 2d 294 (Albany County 1996), in support for the argument that the PSL had been interpreted "as empowering the PSC to deny utilities recovery of prudent costs."

<sup>72</sup> See note 60, *supra*.

<sup>73</sup> Municipal Consortium IB at 11-12.

<sup>74</sup> PULP IB at 18.

<sup>75</sup> The Municipal Consortium, however, also argues that if no return is authorized, then the amortization period should be 10 years. MC IB at 11.



return while ratepayers get higher rates and all of the risk associated with the HWSP investment.

Municipal Intervenors contend that the Company already is compensated for the risks associated with undertaking the HWSP investment through the determination of a reasonable rate of return on rate base. Therefore, if cost recovery is allowed, Municipal Intervenors argue that there should be no return as that "risk" is already recovered through the heightened return on equity on rate base. Municipal Intervenors propose that the Company recover only its costs (i.e., the previously accumulated AFUDC-equity component that is reflected in the \$53.677 million beginning regulatory asset balance should be excluded) with no common equity return on the rate base allowance for the unrecovered balance. Instead, Municipal Intervenors continue, only the long-term debt cost should be applied on the unamortized balance in rate base, contending that this approach would provide a balancing of the interests of the Company and its ratepayers.

The Municipal Consortium proposes three possible alternatives -- either no return on the unamortized balance of the HWSP costs, use of a short-term debt interest rate, or use of a long-term interest rate on the unamortized balance.<sup>76</sup> Mr. Tompkins asserts that the Commission should authorize a rate of return that equals the Company's weighted average cost of long-term debt. PULP asserts that the Commission should authorize a rate of return that reflects short-term interest debt rates, saying it presumably would approximate the Company's financing costs.

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<sup>76</sup> Mr. Levine also proposes no return or interest be granted for HWSP costs. He advocates that any recovery should be in the form of a surcharge on the rate base, excluding HWSP, and should be assessed as they would have been if the costs had been recovered as they were incurred. Levine IB at 9.

Mr. Tompkins asserts that Staff's method of auditing the HWSP costs is flawed and therefore the total amount of the HWSP payments that were made starting on April 1, 2013, through December 31, 2015, should be disallowed pending review of approval documentation and confirmation that each of the payments actually was made. Mr. Tompkins additionally argues that the Qualified New York Manufacturer credit should be applied to reduce the HWSP cost to roughly \$45.5 million and then this lower amount should be amortized over ten years. Recognizing that his approach would result in higher rates, Mr. Tompkins says that the higher rates would provide an even better incentive for conservation.

Suez and Staff argue that the JP's HWSP terms are reasonable and should be adopted. They both argue that the JP's treatment of HWSP costs is consistent with prior Commission orders, a reasonable resolution of a disputed issue, and in the public interest. The Company notes that it pursued the HWSP to comply with Commission orders and says that it acted reasonably and prudently in that pursuit until it was ordered to abandon the Project. It asserts that the proposed treatment of HWSP costs avoids substantial financial harm to the Company, allowing it to focus on more efficiently operating its system, improving customer service, and enhancing its C&E Program, all of which are in the public interest.

Staff states that the opposing parties' arguments ignore decades of Commission precedent and proceed on the unstated and unfounded belief that the Haverstraw abandonment represents a sui generis situation deserving specialized regulatory treatment. Staff observes that, despite the best efforts by utilities and regulators, there previously have been abandoned capital projects that did not result in "used and useful" infrastructure but the costs for such projects were

accorded rate base treatment when they were deemed to have been prudently incurred.

Staff highlights a particular case as being especially on point, explaining that, in that case, Consolidated Edison Company of New York Inc. (Con Edison) had pursued a generation project for years, and after years of regulatory review, protracted litigation, and intense public opposition, the project was abandoned based on a stipulation settling litigation. Staff notes that, when Con Edison sought recovery of its sunk costs, recovery was challenged, unsuccessfully, by claims that the project was not, and never had been used and useful, and that the Commission's use of the "prudent investment" approach would insulate investors from the economic consequences of an abandoned investment, remove their incentive to hold management accountable for unsuccessful business decisions and do nothing to discourage overinvestment in capital assets. Staff highlights the Court's determination that allowing full recovery was not an abuse of the Commission's authority under the Public Service Law (PSL). Staff asserts that such precedents clearly establish that the JP's treatment of Haverstraw costs is consistent with established Commission practice and the PSL, and that the arguments raised by the other parties are neither novel nor effective, having been already considered and rejected by the Commission in the past.<sup>77</sup>

The Company and Staff defend the use of a shorter amortization period of 15 years, instead of 20 years, with the

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<sup>77</sup> Staff IB at 16-17, citing Case 28211, Consolidated Edison Company of New York Inc. - Rates, Opinion 83-7, Opinion and Order Determining Revenue Requirement (issued March 9, 1983) and Abrams v. Pub. Serv. Com., 67 N.Y.2d 205, 209 (1986), the court's decision affirming the 1983 Con Edison Order. The Abrams decision is cited by both the JP's proponents and opponents to support their respective arguments concerning the appropriate regulatory treatment of the HWSP costs.

Company noting that it results in approximately \$7.7 million in customer savings, and came about, in part, in response to concerns raised during discovery. Staff states that, while none of the proposed timeframes are fundamentally unreasonable, the JP's 15 year period provides the optimal balance of interests, avoiding carrying costs and rate impacts while providing the Company a timely recovery of its expenses.

With respect to the proposals to limit the return on the HWSP regulatory asset to a short-term debt rate, the Company states that such a proposal is inconsistent with the Commission's prior decisions that the HWSP costs should be treated as a long-term (i.e., greater than one year) regulatory asset included in rate base. As a result of this decision and designation, the Company asserts that the return on rate base, as reflected by capital structure (equity and long-term debt) and related cost rates contained in the JP, must be utilized.

The Company challenges the suggestion that it should be required to fund specific long-term assets with short-term debt over the long term, asserting that such an approach would impose additional risk of fluctuating short-term interest rates to the Company and its ratepayers and result in significant uncertainty as to the recoverability of costs. It asserts that such results would contradict accepted ratemaking tenets and Commission precedent. The Company moreover claims that limiting its recovery of HWSP costs by capping the return to short-term debt rates would not only significantly harm it, but would also harm the ratepayers by increasing the risk to the Company's investors and to all other NYS utilities in the State, which would increase the investor-required return which, in turn, would increase NYS utility rates and make the NYS economy less attractive to out-of-state businesses.

With respect to claims about Staff's audit of HWSP expenditures incurred by the Company after March 2013, Staff

testified that it reviewed every expense item and its supporting invoice and confirmed that every item identified in the invoices was properly related to the Haverstraw project. The Company describes the Staff's audit as one that was thorough and exceeded standard rate case practice.

The Commission has considered all of the relevant arguments and comments from ratepayers, elected officials, and parties, regarding the appropriate ratemaking treatment that should apply to the HWSP costs. The Commission is aware of the extent to which this issue has dominated not only the public's comments in response to this rate case, but also the parties' comments and arguments. After carefully weighing the competing approaches and options that were proposed and assessing them in terms of how they balance ratepayers' and shareholders' interests and how they comport with relevant precedent and with our prior decisions, the Commission has decided to adopt in part and modify in part the JP's proposal for the rate treatment of HWSP costs.

The Commission acknowledges that the JP's provision for recovery of the HWSP costs is generally consistent with prior Commission precedents. The similarities between what has transpired with respect to the HWSP and the fact pattern as articulated in the Abrams decision are undeniable. Both involve (1) large supply projects undertaken by a utility as part of its obligation to plan for and provide adequate service and supply to its customers; (2) years of pursuing such projects only to ultimately abandon them after significant amounts of money had been expended; and (3) significant opposition to the projects and to the utility's recovery in rates of project costs from ratepayers, elected officials and others. However, the Commission also notes that even though the court in Abrams upheld the PSC's decision to allow for full recovery of the abandoned project, the court also observed that, "if the end

result is a just and reasonable balancing of consumer and investor interest, the PSC may employ the 'prudent investment' test or any other formula or combination of formulae without offending the Federal Constitution or decisional law."<sup>78</sup>

As required by the Commission's previous orders, the Company provided the relevant HWSP-related information in this case. This information was reviewed and adjusted by Staff. All parties were provided with the opportunity to test this information, through discovery and cross-examination. As noted above, two claims have been advanced regarding that review and audit, namely that the invoices were not detailed enough and that Staff's method of auditing was flawed. The Commission finds these claims unpersuasive.

The only evidence cited in support of the claim that HWSP invoices were not sufficiently detailed is a single sample invoice and a hypothetical question and the one word answer to it.<sup>79</sup> The evidence contradicting that claim is more compelling, as it establishes that the invoices were deemed by Staff charged with their review to contain sufficient detail (names, job titles, vehicles used, category of costs, etc.) for Staff to confirm that the costs described were properly associated with the HWSP.<sup>80</sup> Based on a review of this evidence, the Commission finds inadequate support for the assertion that the invoices were insufficiently detailed.

With respect to the claims that Staff's method of auditing the HWSP costs is flawed because it did not require documented approval (including verification of actual payment and internal control compliance over each expenditure) for each

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<sup>78</sup> Abrams, *supra*, at 215.

<sup>79</sup> Tr. 809 and Hearing Ex. 16.

<sup>80</sup> Tr. 635, lines 7-15. See also Tr. 508-514.

and every expense item that was opposed, Staff explained that following such an auditing process would not be practical.<sup>81</sup> The Commission agrees. The review in the prior Surcharge Case was extensive and nothing in this case suggests otherwise. In this case, Staff testified it reviewed every expense item associated with the HWSP and made sure that the costs described were expenses that were properly associated with the Project. The Commission notes that in reviewing the Company's filings, Staff made significant adjustments to the HWSP costs. Between the Surcharge Order and the remaining HWSP costs requested in this case, the Company requested a total of almost \$62 million in HWSP costs. In the Surcharge Order, the Commission disallowed \$7.7 million of costs, largely related to AFUDC interest, and outreach and education expenses. In this case, the Commission is disallowing an additional \$451,000, just over half of which is related to legal bills that were insufficiently supported.<sup>82</sup> The disallowances total \$8.2 million, or 13% of the total requested.

In Case 13-W-0246, Staff also performed a sample check to confirm the Company's internal controls. Staff's sample check to confirm internal controls was part of a broader Staff investigation that Staff performed in response to a list of 18 specific and detailed allegations that were made by Mr. Tompkins in the Surcharge Case. While some of Mr. Tompkins's allegations in that docket led to minor adjustments of the HWSP costs, Staff did not find merit in the allegations he made related to improper approval of invoices.<sup>83</sup> In the Surcharge Case, the

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<sup>81</sup> Tr. 709.

<sup>82</sup> Hearing Exhibit 31 at 1.

<sup>83</sup> Case 13-W-0246, Verified Petition of United Water New York Inc. for Implementation of a Long-Term Water Supply Surcharge,

Commission found Staff's investigation "robust" and concluded that "with very minor exceptions, there was no evidence that the invoices or analysis relied upon were deficient."<sup>84</sup> Staff's review was sufficient even though it did not include an additional sample check to confirm internal controls. The parties have offered insufficient bases to overturn our prior determinations and the Commission declines to alter the scope of review, particularly where, as here, the claim is so broad, has fairly recently been investigated and found to lack merit, and has not been otherwise demonstrated to be likely to lead to a different conclusion if it were again investigated in this case.

The JP would allow for an overall after-tax rate of return of 6.92% on the HWSP. This would allow the Company to recover the cost of financing this asset at the weighted average cost of debt (5.15%) and equity (9.00%). Although this treatment is generally consistent with prior Commission practice, the Commission must always exercise discretion in setting rates including providing for recovery of assets like HWSP. In exercising that discretion the Commission is mindful of the shareholder and ratepayer financial benefits associated with regulatory certainty, shareholder's interest in earning a fair return on invested capital and the ratepayer and economic impacts of the rate decision. The Commission also considers the unique circumstances of this case and particular overall balancing of the terms of the JP.

Although the Company's actions in pursuing the HWSP were not imprudent, the inclusion of the asset into rates is placing significant upward pressure on rates. This additional rate impact can be alleviated to some extent by a more equitable

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And Related Tariff Amendment, Order on Rehearing, (issued February 25, 2016), Appendix B at 23.

<sup>84</sup> Case 13-W-0246, *supra*, Order on Rehearing, at 14-15.



allocation of the risks of this asset as between ratepayers and Company investors. The Commission disagrees with the Company's assertion that only the JP's provisions as to the level of return on its HWSP costs may be utilized consistent with the Commission's determination to treat HWSP costs as a long-term regulatory asset.

The Commission's modification of the JP's proposed rate treatment of HWSP costs is motivated by our objectives of achieving a just and reasonable overall balancing of shareholder and ratepayer interests and ensuring that conservation efforts are successful. And, the Commission will take steps, as needed, to encourage the Company to achieve the full potential of conservation planning. That is why the Commission is adopting the JP's provisions for a Conservation Program Incentive Mechanism that provides positive incentive opportunities of up to 63 basis points over five years. The presence of this incentive, coupled with the fact that the abandonment of the HWSP was authorized with the expectation that conservation could and would be aggressively pursued as a more cost-effective alternative to the Project, lead us to conclude that modifying the HWSP provisions is a reasonable way to achieve our dual objectives, and stress the importance of the Company's effective implementation of conservation in Rockland County.

Under the modified rate plan, return of the HWSP regulatory asset over a 15-year period will be allowed, but the rate of return allowed on the HWSP regulatory asset during the term of the JP will be reduced. The JP would provide for a return consisting of a weighted average of its projected cost of debt (5.15% associated with 54% of its capital structure) and cost of equity (9.0% associated with 46% of its capital structure). This return would require ratepayers to support a full premium on the equity portion of the Company's capital structure. Intervenors, on the other hand, argue that the HWSP

asset should be treated as if it were 100% debt-financed. This would effectively increase the leverage in the Company and result in a capital structure with 58.75% debt and 41.25% equity<sup>85</sup> and thus provide no ratepayer support for the premium above long-term debt required to attract equity capital associated with the equity portion of the Haverstraw investment. This Intervenor recommendation would reduce the revenue requirement by \$1.3 million in the first year of the rate plan.

The Commission finds that a better balance for the return on equity for the HWSP regulatory asset lies between the two positions of a full 9.0% return on equity and a debt-only 5.15% cost, and represents a sharing of the burden associated with the carrying costs for this regulatory asset.<sup>86</sup> The use of a short-term debt cost rate is rejected since the HWSP is a long-term asset that the Company must finance over its 15-year life. Thus, a long-term rate of return will be reflected consisting of both long-term debt and equity, while setting the return on equity at the low end of the range of reasonableness based on the circumstances in this case.

In particular, the Commission notes that allowed ROEs can fall within a "range of reasonableness" and the Commission can adopt an ROE within that range of reasonable return outcomes based on its judgment. In fact, the Federal Energy Regulatory Commission has a practice of establishing a "range of

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<sup>85</sup> Suez's \$331.6 million average rate base in Rate Year 1 consists of \$297.4 million traditional assets and \$34.2 million of the HWSP regulatory asset net-of-tax. The increase in leverage results from recapitalizing the 46% equity used to support the HWSP regulatory asset, \$15.8 million under the JP, to debt.

<sup>86</sup> We note that between the time we ordered the Company to abandon and reclassify the HWSP as a regulatory asset, and the effective date of the rate plan we are approving, the Company has foregone all carrying costs on the asset. As such, Suez shareholders have borne \$3.7 million of carrying costs.

reasonableness" related to returns on equity. This methodology looks at the results of the individual companies used in the proxy group within the discounted cash flow methodology (DCF). Staff took note of this approach in its testimony in Case 16-W-0259 (New York American Water Company, Inc.) and proposed that a tighter "range of reasonableness" (using the 25th to 75th percentile of the individual company DCF results) might be considered. The Commission finds this approach to be a reasonable way to identify acceptable ROE outcomes in this particular instance.

Using this methodology, updated for Staff's proxy group through December 2016, the Commission finds that the low end of the range of reasonableness is 7.6%. Given our concerns with the impact of HWSP costs on customers and the unique history of these costs, the Commission finds that using a 7.6% return on equity for the HWSP regulatory asset is appropriate. This return on equity will be applied to the equity supporting the HWSP regulatory asset (46% of the net-of-tax balance). This produces a revenue requirement reduction of approximately \$312,000 per year during the three years of the rate plan. In fashioning this adjustment the Commission is mindful of the impact on the Company's financial ratios and its credit rating. Based on our evaluation of the financial ratios used by Moody's and Standard & Poors, the Commission finds that a larger adjustment reflecting HWSP as 100% debt-financed as advocated by the Intervenor increases the risk of a credit downgrade which could increase the Company's overall cost of borrowing and financing. For that reason in particular, the Commission rejects the requests that no return be provided on the HWSP regulatory asset, as well as the request for short-term debt and long-term term debt treatment. While this adjustment will make it more difficult for the Company to earn the JP-proposed

allowed equity return of 9.0% on its overall operations,<sup>87</sup> the modified JP provides for positive incentives of 63 basis points over five years associated with the Conservation Incentive Plan. The Commission finds that the end result of its decision provides an adequate opportunity to equity holders to earn a fair return that is within the range of acceptable outcomes for equity returns as reflected in the various methods underlying the Staff and Company witness testimony.

Concerning the amortization period for recovering the Haverstraw regulatory asset, while the Commission recognizes that the amortization period could be longer (or shorter), it note that, all other things being equal, a longer period would result in increased carrying charges, while a shorter period would result in higher rates. Accordingly, the Commission finds that 15 years represents a reasonable balancing of the competing goals of avoiding additional financing expense and ameliorating rate and bill impacts.

Finally, the Commission notes that the JP signatories acknowledge that there is a pending Article 78/declaratory judgment court action challenging the Company's ability to recover HWSP-related costs. The JP therefore includes a statement that "[a]fter all final appeals and remands, if any, have been finally decided and/or the time for all appeals has expired, mandated changes to the Company's recovery of HWSP-related expenses will be reflected in the Company's revised rates after the Rate Plan term on a prospective basis only." It is clarified here that the Commission is not adopting this provision. If, after the issuance of a final, non-appealable court order, the Commission decides, in response to such order, to modify its determinations concerning HWSP recovery prior to

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<sup>87</sup> The reduction to the HWSP return equates to approximately 14 basis points per year.

the expiration of this rate plan, the JP's statement that "mandated changes to the Company's recovery of HWSP-related expenses will be reflected in the Company's revised rates after the Rate Plan term on a prospective basis only" will not bar such action.

#### Non-Revenue Water

Non-Revenue Water (NRW) represents the portion of water that is produced but not ultimately billed. During the historic test year, Suez's NRW represented 24% of total water produced for Suez customers.<sup>88</sup> NRW comprises unbilled authorized consumption (i.e., unmetered consumption or water used to maintain the system), and water losses. Water losses, in turn, comprise apparent losses (i.e., theft) and real losses (leakage). Because the individual components of these categories cannot be measured directly, they are estimated. To the extent real losses can be reduced, less supply is needed to meet demand. But it is important to recognize that real water loss, which is roughly 60% of NRW, also has two components: unavoidable real losses and avoidable/recoverable real water losses.<sup>89</sup>

The NRW program and its goal of achieving 1 MGD of real water loss savings as set forth in the JP are predicated on

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<sup>88</sup> Hearing Exhibit 59.

<sup>89</sup> The American Water Works Association (AWWA) Manual of Water Supply Practices - M36: Water Loss Audits and Loss Control Programs (4<sup>th</sup> Ed.) (AWWA M36) defines unavoidable real losses (UARL) as follows:

The UARL represents the minimum level of leakage that is calculated in the system-specific manor for a water utility. It represents the theoretical low limit of leakage that could be achieved in a system that is well managed and in good condition at a given pressure level.

Hearing Exhibit 66 at 102.

a multi-faceted approach. The approach includes the successful ramp-up of the transmission and distribution (T&D) main replacement rate to 1.0% annually by 2020, subject to a \$17 million cap; installing AMI and implementing DMAs; use of a full-time NRW manager; and a leak detection and repair program. Under the JP, the Company will have an initial goal of reducing NRW to 18% by the end of the rate plan. The Company should also pursue programs to accelerate repairs once leaks are reported, regular metering tests, meter upgrades as necessary, water supply auditing on a regular basis, regular water accounting and billing tests, incentives for management to control water losses, and programs for the reduction of water theft. While large mains are an important source of conservation opportunities, the cumulative effect of small pipe leaks must also receive appropriate attention.

Sierra Club Atlantic Chapter and the Municipal Consortium submitted testimony that the NRW program should be modified to include: (1) hiring a real loss water contractor at a cost of \$1.5 million over a 2-year period to identify leaks for repair, to reduce real water loss by 1.0 MGD in the short term; (2) increasing the main replacement rate to 1% per year with an accelerated rate of 1.5% per year for the next five years to "catch up"; (3) quarterly NRW reporting (until it falls below 18%); (4) a performance incentive and penalty for NRW performance specifically related to the real water loss component of NRW; and (5) complete cost data to assess the cost-effectiveness of NRW management as a supply side alternative.<sup>90</sup> These parties also faulted the NRW program for not incenting the Company for exceptional NRW management or providing a consequence to the Company for failing to achieve less than 18%

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<sup>90</sup> Tr. 1176-1177.

NRW.<sup>91</sup> Based on testimony by Sierra Club Atlantic Chapter and Municipal Consortium Witness Jonathan Kleinman, they asserted that the Company could reduce real water loss by 2 MGD. During cross-examination, the approach used by Witness Kleinman to support 2 MGD reduction in real losses was demonstrated to be unsound in multiple respects and Witness Kleinman conceded that achieving an avoidable real water loss of 2 MGD is "unrealistic." Witness Kleinman also withdrew his recommended 1.5% accelerated main replacement rate.<sup>92</sup>

In the joint initial brief, the Task Force, Sierra Club Atlantic Chapter, Sierra Club Lower Hudson Group, the Municipal Consortium and PULP<sup>93</sup> say that the NRW program consists of a pledge to comply with existing regulations, but has no meaningful repercussions if the 18% target is not reached and no requirement for reporting by the Company on progress below the 18% threshold or on the distinction between real water losses and apparent losses. While they say that they welcome the AMI and DMA components of the NRW program, they also say these components will not be fully effective for a few years and that, in the meantime, there is nothing in the JP that requires the Company to step up efforts to detect and address leaks. In both the initial and reply joint brief, they continue to argue that a 2 MGD reduction in real water loss is feasible through a concentrated real water loss reduction program and can be assumed by relying on the Company's own estimate of 1 MGD and adding 1 MGD associated with hiring a water loss contractor.

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<sup>91</sup> Tr. 1178.

<sup>92</sup> Tr. 1176, 1312-1313.

<sup>93</sup> Hereafter, these parties will be referred to as Joint Briefing Parties.

This argument is at odds with the record produced during Witness Kleinman's testimony.

In its individual brief, the Municipal Consortium states that the 1% main replacement target is reasonable provided the Company prioritizes the replacement program to areas of the system with the greatest level of leaks as this should eventually help to lower NRW.<sup>94</sup> Mr. Levine indicates his support of the 1 MGD target and proposed AMI and DMA strategy, but also advocates the addition of a negative incentive to spur the efforts to reduce the NRW level. Municipal Intervenor indicate general support for the JP's NRW provisions, but say the program should be enhanced to include an incentive for the Company to reduce NRW to at least 18% and to require quarterly reporting of NRW in compliance with AWWA M36 Software guidelines. Municipal Intervenor suggest a negative incentive of, at minimum, \$209,000, or, at optimum, \$443,387.<sup>95</sup> In their reply brief, Municipal Intervenor argue that the overall goal of reducing real water loss by up to 2 MGD seems possible. Again, this argument is inconsistent with Witness Kleinman's concession that this was "unrealistic."<sup>96</sup>

Reducing water losses must be pursued with vigor. The JP's NRW provisions represent a deep commitment to reduce NRW. Significant capital expenditures are being committed to install District Meter Areas (DMAs) and Advanced Metering Infrastructure (AMI) and accelerate main replacement. By increasing data granularity, the Company will be expected to better detect and prevent/repair leaks. We modify these provisions to reflect the Company's pledge to only reconcile production-related costs

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<sup>94</sup> Municipal Consortium Initial Brief at 8.

<sup>95</sup> Municipal Intervenor Initial Brief at 11-12.

<sup>96</sup> Tr. 1312-1313.



(energy, chemicals, and waste residuals) up to a NRW level of 18%.<sup>97</sup> By reconciling production-related components, not to their actual costs, but instead using the amount they would cost at an NRW level of 18%, the Company will have an incentive to reduce actual NRW levels. This is because the Company will experience a negative financial impact if NRW exceeds 18% and a positive financial impact if NRW is below 18%. This modification responds to and addresses calls by Municipal Intervenor, Mr. Levine, and the Joint Briefing Parties to impose financial repercussions for the failure by the Company to achieve an 18% NRW level. We note that, using the test year levels, the dollar amount associated with this modification would amount to a negative financial incentive to the Company that would exceed the maximum dollar amount recommended by Municipal Intervenor in its brief.

The Company's pledge should be expanded to ensure that the Company has added incentive to generate improvements to reduce NRW below the 18% level. The production cost reconciliation mechanism should be performed using an 18% NRW for each of the rate years. In this way, any production cost savings associated with NRW improvements beyond the 18% level will inure to the Company's earnings.<sup>98</sup> This will better align the Company's financial incentives with the ratepayers' interest in reducing real losses and avoiding the need for future supply.

Based on a fair reading of record, there are more areas of agreement and support of the JP's NRW provisions than

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<sup>97</sup> Suez Initial Brief at 4 (pledging to only reconcile production-related costs up to a NRW level of 18% and noting that, at Test Year NRW levels of 24.55%, the production-related costs absorbed by the Company would amount to approximately \$459,000 or 18 basis points).

<sup>98</sup> The potential production-related costs are estimated to be about \$196,000.

might be readily apparent. For example, there seems to be broad support among both the JP's signatories and opponents for the AMI and DMA components of the JP's NRW provisions and for increasing the main replacement rate to 1%. This support comes from the recognition that such components are reasonable and should help facilitate efforts to detect leaks, prioritize repairs and reduce NRW.

Additionally, both the JP's signatories and the opponents' principal witness on redirect agree with the medium- to long-term goal of achieving NRW levels in the 15 to 18% range.<sup>99</sup> The goal of getting below 18% NRW is expressly stated in the JP. The modification discussed above to introduce negative and positive financial incentives to reduce NRW to and below 18% is in line with all parties' views and also consistent with our outcome-based approach to incentives as articulated in our REV Order.<sup>100</sup>

Finally, with respect to the calls for the provision of "complete cost data" to assess the cost-effectiveness of NRW management as a supply side alternative, the JP already requires reporting that includes identifying any significant events that impact NRW and specific measures being taken to reduce NRW to acceptable levels; providing a breakdown of NRW into unbilled authorized use, apparent losses, and unauthorized real losses; and identifying the major drivers of NRW along with the type of NRW that is being addressed by the specific measures the Company is taking to reduce NRW.

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<sup>99</sup> Tr. 1413.

<sup>100</sup>Case 14-M-0101, Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision, Order Adopting a Ratemaking and Utility Revenue Model Policy Framework (issued May 19, 2016).

The only real area of contention that remains after accounting for all of the above is the argument by several parties that quarterly NRW reports should be required.<sup>101</sup> We decline to require NRW reporting on a quarterly basis. Since NRW losses tend to fluctuate seasonally, quarterly reporting information would not provide an accurate picture of NRW.<sup>102</sup> We will, however, expand the NRW reporting requirement to require the Company to notify this department when annual non-revenue producing water use exceeds 15% of annual production and to include in this notification specific measures being taken to reduce non-revenue producing water use to acceptable levels and a description of any significant event that impacted this level.<sup>103</sup>

Overall, we find that the NRW provisions, as modified in the Company's brief and in this order, are reasonable and should be adopted. The proposed and modified NRW program continues and enhances the regulatory requirement that the Company provide annually a detailed report to the Commission

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<sup>101</sup>Tr. 1176-1177.

<sup>102</sup> We also decline to require the hiring of a real loss water contractor at a cost of \$1.5 million over a 2-year period; such a requirement is unnecessary where, as here, the Company has already hired a NRW Manager, the cost of whom is included in rates (Tr. 89).

<sup>103</sup> 16 NYCRR §503.8 requires each water corporation to "notify this department when annual non-revenue producing water use, which would include lost and unaccounted-for water as well as other non-metered uses of water, exceeds 18 percent of annual production" and to include in that notification "specific measures being taken to reduce non-revenue producing water use to acceptable levels and a description of any significant event that impacted this level." We are mirroring the requirements of 16 NYCRR §503.8, except that yearly notification also would be provided when annual non-revenue producing water use exceeds 15 percent.

concerning annual non-revenue producing water production levels in excess of 15%. This report will include any significant events that impact NRW and specific measures being taken to reduce NRW to acceptable levels, and will provide a breakdown of NRW into unbilled authorized use, apparent losses, and unauthorized real losses. It also will specifically identify the major drivers of NRW and identify which type of NRW is being addressed by the specific measures the Company is taking to reduce NRW. Finally, a copy of the Company's annual water audit would accompany the report.<sup>104</sup> These provisions adequately address the concerns that were raised by various parties as to the need for such information to be provided.<sup>105</sup>

#### Conservation and Efficiency Program

##### Program Targets and Components

To ameliorate supply issues, the JP proposes a five-year conservation program that addresses residential, commercial, institutional and industrial customers. The Conservation and Efficiency (C&E) Program includes: rebates for customers who purchase water efficient products (toilets, faucets, fixtures) that carry WaterSense or Energy Star labels to replace older inefficient fixtures; outreach and education surveys and water audits; use of AMI; trade workshops and training; and conservation-oriented rates. The JP calls for a budget of \$5.2 million over five years associated with achieving the baseline target of 1 MGD.<sup>106</sup> Additional recovery beyond the \$5.2 million is provided for through the SIC.

The C&E Program also encompasses the Conservation Program Incentive Mechanism, discussed below, that establishes a

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<sup>104</sup> JP §X.

<sup>105</sup> JP §XI.6 and Appendix 3.

<sup>106</sup> JP §XIX.1.

baseline target of 1.0 MGD (up to 2.0 MGD) of actual water savings due to the Company's rebate program as evaluated after five years. The JP provides negative and positive incentives.

The Joint Briefing Parties contend that the conservation baseline goal of 1 MGD is not aggressive and leaves potential water savings on the table. Asserting that water conservation is less expensive on a per MGD basis than procuring new supply, the Joint Briefing Parties criticize the JP's C&E Program for failing to maximize the cost-effective potential for water conservation and cost-effectiveness that could be achieved in a more robust and better-designed conservation program.

The Joint Briefing Parties also assert that a five-year time horizon is too long, given that this new program will need frequent course corrections. They advocate for annual, increasing targets that combine water conservation and NRW reduction and are tied into the incentive mechanism. They propose a five-year target of up to 2 MGD for water conservation and another 2 MGD for NRW reduction.

The Joint Briefing Parties fault the program for relying on do-it-yourself audits, saying they fail to provide customers with direction to actually implement water conservation measures or the financial incentive needed to enable retrofits. They assert that there is no detail on how the proposed irrigation rebates will work, or whether they will be effective. They argue that savings anticipated from the indoor rebate program rely heavily on free ridership (58%), meaning ratepayers will only be paying themselves to replace their older fixtures that would have been replaced absent the rebate anyway. They add that savings will not be measured until five years from now.

While they recognize that flexibility to adjust rebate numbers and amounts was intended, they take issue with such decisions being in the Company's control. They contend that the

Company has no concrete plans for exactly how it will achieve target water conservation rates through the rebate program, has provided no details yet on how the rebate program will be marketed, and did not study the potential benefits of a direct install program.

They say it is not clear that the program includes rebates for industrial and commercial fixtures and equipment, which they argue could represent the largest opportunities for demand reduction for non-residential customers. In addition, they assert that the program does not require the Company to use data from AMI to educate and drive conserving behavior in its consumers by giving them information comparing their use to conserving households. They also claim the program has no target or incentive to maximize and measure the conservation potential that derives from the information that AMI can provide to consumers.

They also argue that the C&E Program should have a "more robust design," which they say would include additional programs such as Residential Direct Install, Commercial, Institutional & Industrial (CII) Incentive and Technical Assistance, and a Residential Irrigation Consultancy; third-party evaluation and verification of savings results; and creation of a water conservation manager position.<sup>107</sup> They state that if these and other changes recommended by Witness Kleinman are implemented, the amount of water conserved can be cost-effectively doubled (from 1 MGD to 2 MGD).

Mr. Levine argues that the C&E target should be increased to 1.5 MGD but only if free riders are not counted. He also proposes a C&E Program that would cost \$2.25 million per year for five years (a total of \$11.25 million) and would include, among other things, budgets for audits and retrofit

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<sup>107</sup> Tr. 1181.

programs for residential, business, government, schools, and institutional users; a special program for large family users; and a budget for training and best practices (or an increase in audit and retrofit programs).<sup>108</sup> Mr. Levine's program would focus first on multiple dwellings because he already has a list of such buildings and their dates of construction. Mr. Levine argues that the JP's C&E Program is "designed to fail," and that there is a large amount of evidence that the rebates are "too low." He argues that the reliance on positive and negative financial incentives to the Company and on the fact that periodically the program can be reviewed and changes made will just lead to long delays and implementation. He also claims that the Joint Briefing Parties' plan, while good on certain aspects, does not spend enough and relies too much on passive rebates and incentives, while his plan is good and verifiable.

Municipal Intervenors state that, in past orders, the Commission was quite clear that the Company was to work with the Task Force and other stakeholders to develop the model conservation plan and it failed to do so. While stating that the JP Conservation Program is a slight improvement over the Company's original position, they assert it is not a plan at all. Rather, say Municipal Intervenors, it is merely a list of measures for which the Company seeks financial recovery. Municipal Intervenors add that the JP proposal doesn't look to innovate and squeeze as much water savings as possible from conservation.

Municipal Intervenors say they are leaving it to Legislator Cornell, the Task Force, Scenic Hudson, Sierra Club and others to flesh out the details of what can be achieved and the elements of a forward thinking and robust conservation plan, but that the Commission should heed their voices. Municipal

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<sup>108</sup> See Hearing Exhibits 20-25.

Intervenors add that they seek to ensure that the Company re-engages with the community to work out a robust plan to meet future water supply needs through cost-effective conservation measures.

The Commission's approach is to establish institutional frameworks that encourage the Company to improve system efficiency by implementing proactive conservation and water-loss management practices. Those practices must include water conservation programs, water conservation-oriented rates, and, as discussed above in NRW, active leak detection and repair programs. The water conservation programs will be most effective when supply and demand side decisions are integrated. If the Company deals with water losses proactively through the adoption of innovative management strategies, it can successfully improve system efficiency and overall performance.

With respect to claims that the 1 MGD baseline target is not sufficiently aggressive, we note that it is a starting point, and, its success depends upon the behavior of third parties - - the Company's customers. Further, our analysis of the record suggests that the savings associated with the JP and the AIQUEOUS targets are similar when expressed on a more comparable measurement basis.

The total conservation savings proposed by Sierra Club Atlantic Chapter and Municipal Consortium Witness Kleinman in his AIQUEOUS Report is 2.228 MGD, which is 1.184 MGD more than the JP proposes as a baseline. The vast majority - 0.85 MGD - of the difference is attributable to a smart metering program to which the Company has already committed itself but which is not proposed to be measured as part of the conservation program incentive mechanism. Savings associated with a yet-to-be-implemented smart metering program would be difficult to estimate and measure and were reasonably not included in the incentive mechanism. Adjusting for this item, together with



other double counts and overstatements of savings in Witness Kleinman's testimony,<sup>109</sup> indicates that the savings associated with the JP and Witness Kleinman's proposed program are similar.

Finally, as Staff observes, the JP's 1 MGD baseline target is consistent with the conservative estimate accepted by the Commission in the Abandonment Order.<sup>110</sup> The Black & Veatch Conservation Assessment that was prepared for Suez in this proceeding provides useful context for the conservation savings goals. Appendix 9 of the Black & Veatch Report shows that 40,000 inefficient pre-1992 toilet fixtures remain in service in the single-family market.<sup>111</sup> For the single-family market, which is one of the most important means of achieving water conservation in the JP, to reach the 2 MGD savings target the Company must issue roughly 30,000 single-family toilet rebates.<sup>112</sup> This represents a significant level of penetration in what might be a difficult portion of the market to convert to efficient fixtures.

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<sup>109</sup>Staff's testimony explained that Witness Kleinman's savings associated with his direct install program used 0.8 gallons per flush as the water efficiency of the new toilets, which is significantly lower than the [1.28] gallons per flush average WaterSense rating. Witness Kleinman's savings appear to also have double counted water savings from showerheads, among other inaccuracies. Tr. 684-686; see also Hearing Exhibit 34 (Black & Veatch Report, p. 49).

<sup>110</sup>Abandonment Order at 6. In the Abandonment Order, the Commission noted that the Company's 1 MGD savings estimate associated with rebates was in line with the low end of the estimate for the same type of program submitted in November 2013 by Dr. Stewart Braman, who is an adjunct associate research scientist at Lamant-Doherty Earth Observatory at Columbia University. See Abandonment Order, fn. 19.

<sup>111</sup>Hearing Exhibit 34.

<sup>112</sup>JP Appendix 8, page 1 of 1. 15,000 toilets are associated with baseline target of 1 MGD.

Based on the record, we find that the savings target associated with the JP's C&E Program is practical, measurable, sufficiently aggressive, and achievable. While many parties have argued that savings associated with free riders should not be counted, we find that it is not practical to separately identify and measure such savings.

A key difference between the JP's C&E Program and the conservation programs of the other parties is the absence of a mandate for a residential direct install program. The record suggests that the cost of a direct install program would be significantly greater per unit of savings achieved than the rebates proposed in the JP. The direct install program would cover the full cost of the toilet and labor installation costs. While Witness Kleinman provided no support in his testimony or the AIQUEOUS Report for his estimate of savings associated with his proposed budget, Suez deduced a cost of \$384 per household (2.43 toilets and 1 showerhead per household).<sup>113</sup> Suez claimed this was an optimistic estimate and that the cost effectiveness of the proposal would diminish if actual material and labor costs were higher. Staff also argued that Witness Kleinman's direct install program understated costs and overstated the savings benefits.<sup>114</sup>

The Commission recognizes that a direct install program focused on low income households could reduce free ridership. The Commission also recognizes that bulk purchases of both fixtures and installation labor could help to reduce program costs and that a direct install program focused on households with well above the average number of toilets and/or occupants could improve the cost effectiveness of such a

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<sup>113</sup>Suez Initial Brief, p. 69. This equates to roughly \$158 per toilet versus rebates of \$75 as proposed in the JP.

<sup>114</sup>Staff Initial Brief, p. 41

program. However, the record does not adequately demonstrate that such a program could be cost-effectively implemented. As part of the Company's effort to design a low income rebate program, we will direct the Company to study the feasibility of pursuing a cost-effective direct install program.

We also decline to adopt the Joint Briefing Parties' (and, to the extent he joins or adopts their position, Mr. Levine's) calls for inclusion of other specific program modifications such as residential irrigation consultancy, commercial industrial and institutional assistance, third-party evaluation, measurement and verification, and the hiring of a water conservation manager. Adoption of these program modifications could needlessly constrain a program that is purposely designed to be flexible. Instead, the program should remain facile enough to incorporate these or other measures that are demonstrated to be cost-effective. We continue to welcome local government action, such as irrigation ordinances, new construction and retrofit ordinances and water waste ordinances. The Company should actively educate municipal leaders as to potential model code changes they could make at the municipal level that would promote water conservation. Such steps and actions would complement the Company's efforts and help ensure the attainment of our shared conservation goals. With respect to the hiring of a water conservation manager, the record does not support such an incremental cost which may be redundant and unlikely to add an additional value or benefit. Instead, the Company should publicly identify a manager whose responsibilities include water conservation efforts. The person so identified shall serve as the point of contact for coordinating the Company's conservation efforts.

The first three years of the C&E Program are included in the revenue requirements as shown in Appendix 2 of the JP, with the recovery of costs after the three-year period to be

determined in the next rate proceeding. Several parties argue that program costs should be recovered through a conservation surcharge so that it provides more flexibility in the program's management and implementation. We find that recovering the C&E costs in rates contributes to rate stability and certainty without compromising flexibility because, to the extent there are any incremental costs, the Company may collect such costs either in the SIC or by deferral.<sup>115</sup>

The C&E Program as proposed requires semi-annual progress reports that will discuss rebate utilization levels, any major findings, feedback, and any significant adjustments to the program. We are not persuaded that the quarterly reporting advocated by some parties is necessary or would be more beneficial. Semi-annual reporting is based on Staff's experience in similar programs such as EEPS, and is adequate to ensure proper monitoring.<sup>116</sup> In addition, we reject the calls for third-party verification as an unnecessary cost and duplicative of the Commission's and Department Staff's regulatory role. We also note that the JP requires the Company, within six months of implementation, to prepare specific criteria to adjust rebate levels and budgets.<sup>117</sup> Those criteria should be filed with the Commission.<sup>118</sup>

#### Incentive Mechanism

To align the Company's financial interest with ratepayers' interest, the JP establishes a Conservation Program Incentive Mechanism in which actual water savings from the

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<sup>115</sup> JP §XIX.4; Tr. 97-98.

<sup>116</sup> Tr. 650.

<sup>117</sup> JP Appendix 9, p. 2.

<sup>118</sup> Filing with the Commission means that the information at issue will be posted to DMM system and thus would be available for review by any interested person.

Company's rebate program will be evaluated after five years against a baseline target of 1 MGD of actual water savings based on engineering estimates. If actual water savings from the rebate program are less than 1.0 MGD at the end of the five-year period, then the Company will incur a negative adjustment of 5 basis points at 0.8 MGD in actual water savings, plus an additional 5 basis points for each 0.1 MGD increment below the 0.8 MGD negative revenue adjustment starting point. Starting at 1.5 MGD in actual water savings, the Company may earn a positive revenue adjustment ranging from 5 to 63 basis points. The Company will also be able to recover incremental costs of the rebates redeemed and savings achieved that are above the 63 basis point level. Any negative or positive revenue adjustments and incremental rebate costs will be addressed through the SIC.

The Joint Briefing Parties argue that the JP's water conservation incentives do not meet the minimum levels of demand-side reduction that the Commission relied upon to order abandonment of the desalination project in 2015. They state that the penalty is only imposed if Suez does not achieve 0.8 MGD of savings and thus there is no real incentive to achieve more than 0.8 MGD. The Joint Briefing Parties argue that the incentive mechanism must be modified to be based on program net benefits with incentive caps based upon a percentage of the program budget and the Company's savings calculations must be independently reviewed and verified. They add that the penalty for underperformance also should be set at a percent of the proposed budget.

Mr. Levine argues that the Conservation Program Incentive Mechanism targets should not include any passive or background (free riders) water savings and the program should have no positive incentive at all. He argues that the Company has had conservation in its approved rate cases since the early 1990s and has shown virtually no measurable results.

Given the importance of achieving the goals of the Conservation Program, the newness of the program, and the challenges associated with successfully implementing the program, we conclude that an incentive mechanism is warranted and appropriate. The JP's incentive mechanism is designed to provide for a sharing of net benefits (avoided supply costs) that would accrue to customers if the Company can deliver additional conservation benefits beyond the 1.5 MGD target. The 0.8-1.5 MGD dead band was intended in part to account for free riders.<sup>119</sup> We are modifying the incentive dead band to range from 0.9 to 1.5. The incentive, as modified herein, aligns the Company's and the ratepayers' interest to achieve an important objective.

The Joint Briefing Parties' proposed program net benefits approach, while theoretically attractive, would introduce substantial uncertainty, complication and, to the extent it calls for an independent review, additional costs. As the Commission has previously noted, "incentive mechanisms are less effective and lead to significant controversy when metrics rely on complicated verification processes and debatable baseline assumptions."<sup>120</sup> We agree with Staff that simplicity of measurable results and fixed incentives are important in an incentive program as they limit disputes over results and encourages the Company by providing clear parameters on how incentives can be achieved.<sup>121</sup>

We also decline to expand the incentive mechanism to try to capture the elements of the conservation program other

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<sup>119</sup> Suez Initial Brief at 82-83, citing Tr. 158 and Hearing Exhibit 7.

<sup>120</sup> Case 14-M-0101, Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision, p. 65.

<sup>121</sup> Staff Initial Brief, p. 48.

than rebates, because the savings attributable to such efforts are not easily quantifiable relative to other typical variations in usage due to factors such as weather, shifts in the economy and changes in demographics.<sup>122</sup> Again, we find that it is preferable to establish a mechanism that is practical, reasonable, and easily verifiable.

However, we are concerned that, as structured, the maximum positive incentive of 63 basis points could be earned by the Company for achieving less than a full 0.1 MGD increment above 2.0 MGD in water savings. We therefore clarify that in order to earn the maximum 63 basis point positive incentive, the actual water savings must be greater than or equal to 2.1 MGD.

As noted above, conservation incentive targets are cumulative five-year targets. Some intervenors proposed annual targets based on their proposed cumulative five-year targets with a non-linear ramp-up over the five-year period.

We recognize that the C&E Program is new and will take time to ramp up and that annual targets may not be fully reflective of progress that can be achieved on the ground. While we decline to set annual milestones, it is critical that the plan drive progress throughout the five-year period. Therefore, in addition to semi-annual reports on the progress of the C&E Program, we will adopt a third-year milestone for Conservation Program Incentive Mechanism. Borrowing from the ramp-up schedule proposed by Municipal Consortium and Sierra Club Witness Kleinman, we will set targets and associated positive and negative basis point adjustments for the end of the third year based on 45% of the five-year targets and incentives. To the extent the Company triggers positive or negative adjustments at the third-year milestone, the incentive adjustments remaining for the five-year cumulative targets would

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<sup>122</sup> Suez Initial Brief at 83-84.

be reduced. For example, if the Company earns 13 basis points at the third-year milestone, the Company would need to reach the third-tier incentive level in Year Five in order to reach remaining basis point adjustments. Similarly, if the Company incurs a negative adjustment of 2.25 basis points at the third-year milestone, the first tier of negative adjustment at the five-year point would be reduced by that amount.

System Improvement Charge

The System Improvement Charge (SIC) is designed to provide the Company with the flexibility to undertake significant necessary construction projects. PULP opposes the SIC, urging its rejection. The Municipal Consortium and Municipal Intervenors assert that approved SIC projects and associated capital expenditures should not include three new production wells and their associated costs that total almost \$10 million dollars. The Municipal Consortium and Municipal Intervenors argue that there is no need for new supply in the short term.<sup>123</sup> The Municipal Consortium contends that current system capacity as compared to current average day demand demonstrates the lack of need or basis for new supply at present. Municipal Intervenors state that the Commission previously held that a new supply of 5 MGD would not be needed until at least 2035.<sup>124</sup> While the Municipal Consortium and Municipal Intervenors agree that the Company should investigate

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<sup>123</sup> PULP Initial Brief at 7; Municipal Consortium Initial Brief at 7-8; Municipal Intervenors Initial Brief at 13-14.

<sup>124</sup> Municipal Intervenors Initial Brief at 14.



and plan for new wells, both argue that Suez should not make this investment at this time.<sup>125</sup>

Municipal Intervenors and the Municipal Consortium assert that the projects slated for inclusion in the SIC would only be pre-approved by Staff but would not be approved by the Commission. The Municipal Consortium states that requiring only Staff review before the SIC would be allowed to go into effect, thereby increasing rates, violates PSL §89-c(10)(b) and therefore is clearly not in the public interest. The Municipal Consortium also asserts that SIC is entirely Company favorable with no offsets for productivity or other potential efficiency gains.<sup>126</sup> PULP argues that the SIC should be rejected because it allows for recovery of project costs to begin during construction and its implementation would artificially suppress the announced rate increase and associated bill impacts.<sup>127</sup>

Municipal Intervenors assert that the SIC includes a host of projects that have not been fully designed or even commenced yet. Municipal Intervenors express concern that, if any of these more speculative and not fully vetted projects are canceled part way through, ratepayers would again be required to pay for a failed project based upon pre-approval by Staff.<sup>128</sup>

Staff and the Company respond that PULP and Municipal Intervenors misunderstand the SIC. They say that PULP's

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<sup>125</sup> Mr. Levine says that he supports the Municipal Consortium's position on the SIC except as to new wells. He seems to support the inclusion of wells but states that any unspent funds on wells should go into agreements or studies on interconnecting with Nyack and Suffern, and the well test in Suffern should not await the results of the Ramapo River watershed study. Levine Initial Brief at 7, 11.

<sup>126</sup> Municipal Consortium Initial Brief at 15.

<sup>127</sup> PULP Initial Brief at 7.

<sup>128</sup> Municipal Intervenors Initial Brief at 13.

assertion that the SIC mechanism will allow recovery for the cost of projects during their construction and the speculation by Municipal Intervenors that the SIC mechanism might allow for the recovery of projects that are abandoned before completion lack merit. Suez and Staff note that the JP clearly states that "the SIC surcharge cannot be imposed until all work is completed and verified by Staff" and the projects are put in service.<sup>129</sup> Staff notes that the authorized projects involve maintenance of facilities, water treatment, and new wells, and, as such, are unlikely to impact the Company's productivity. In any event, Staff says that any productivity benefits that are derived will be captured by the JP's productivity adjustment.<sup>130</sup>

Regarding the claim that the SIC will not be approved by the Commission, Staff explains that the Commission has determined that it may delegate its authority where there are adequate standards and justification for it, and where the delegation is made to an appropriate person.<sup>131</sup> Staff states that the JP provides adequate standards and sufficient guidance for Staff's review of the Company's SIC filings.<sup>132</sup> Suez says that the SIC does not violate the PSL simply because the Commission will not review every project before it is placed in the SIC. It cites to the decision in Abrams v. Consolidated Edison to support its assertion that the PSL's notice and hearing requirements are fulfilled when the utility files a rate case and the reasonableness of such surcharge formulas are

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<sup>129</sup> Staff Reply Brief at 10; Suez Reply Brief at 13.

<sup>130</sup> Staff Reply Brief at 11, citing JP/Hearing Exhibit 5, Appendix 2, pp. 8, 18 and 28.

<sup>131</sup> Staff Reply Brief at 11, citing Case 09-M-0207, Delegation of Authority, Order Delegating Authority (issued September 18, 2009), at 9.

<sup>132</sup> Id.

thereby made available for public scrutiny and criticism.<sup>133</sup> It adds that once the Commission approves the surcharge mechanism, no further Commission approval is required. Suez also asserts that the fact that such a mechanism has previously been approved by the Commission for New York American Water Company Inc. further evidences its lawfulness.<sup>134</sup>

Finally, with respect to the opposition to the three new production wells, Suez characterizes the assumption underlying such opposition - which is that conservation is a suitable replacement for any new supply - as flawed and reckless, claiming that it vastly underestimates the public risk associated with abandoning supply expansion efforts. Suez also says that this underlying assumption is based on the flawed and discredited testimony of Witness Kleinman, discussed *supra*. Suez points to its statutory responsibility to provide safe and adequate water service to all customers in its service territory, asserting that it cannot gamble on conservation efforts alone to ensure sufficient supply. Suez also says that such opposition ignores the Commission's recent approval of the Company's water management strategy which included "the potential for developing new wells."<sup>135</sup>

We have considered the arguments for and against the implementation of the SIC as proposed in the JP. The arguments that the proposal would effectively constitute pre-approval by Staff with no approval by us are incorrect. The JP clearly

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<sup>133</sup> Suez Reply Brief at 13, citing Abrams v. Consolidated Edison, 87 A.D.2d 708 (3d Dep't 1982).

<sup>134</sup> Suez Reply Brief at 13-14, citing Case 11-W-0200, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Long Island Water Corporation d/b/a Long Island American Water for Water Service, Order Determining Revenue Requirement and Rate Design (issued March 20, 2012) at 19-20.

<sup>135</sup> Suez Reply Brief at 14.

lists the projects and the associated capital expenditures for which the SIC may be used and expressly states that the SIC will allow recovery of carrying charges on those specific projects when they are placed into service. It also clearly states that the surcharge cannot be imposed until all work is completed and has been verified by Staff. It further specifies, in sufficient detail, the contents of the compliance filings that are required to be made by the Company, for Staff's review, before any submitted surcharge may be permitted to go into effect. Thus, our action in this order would constitute our approval of the SIC and its component projects, and of the future process for the verification review and implementation of that SIC, and would be lawful and appropriate.<sup>136</sup> Staff's role is limited to verification, not approval.

However, we are concerned by the inclusion of the three new production wells on the list of SIC-eligible projects. While we continue to hold the view that the Company's three-part strategy for addressing its customers' water needs over the next decade is reasonable, as is evidenced by our approval of the expenditures related to the other two parts of that strategy (i.e., conservation and leak detection), we are not persuaded that recovery of the carrying charges associated with the three new production wells needs to or should be approved at this time. We reach this conclusion, in part, because the signatory parties did not cite to sufficiently persuasive support for us

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<sup>136</sup> Based on this same reasoning, we reject similar claims that allowing the Company to decide whether incremental costs related to the indoor and outdoor rebate programs and/or the low income rebate programs can be deferred or collected through the SIC mechanism would violate the PSL and therefore not be in the public interest. Thus, our approval of the C&E and low income rebate programs includes approval of the provisions that the Company may, at its option, either defer such costs or seek to recover such costs through the SIC.

to conclude, for example, that it is necessary for these wells to be included in the SIC now. We believe this part of Suez's three-part strategy may be reassessed or Suez's timing of need for one or more of the wells may be revised due to the implementation of the C&E program or NRW efforts, discussed above. Therefore, we will approve the SIC, but modify the list of SIC-eligible projects to exclude the three new production wells.

Our decision not to include these wells on the list of SIC-eligible projects and expenditures at this time is made without prejudice to Suez's ability to request recovery of its prudently-incurred expenses associated with its continued exploration of small sources of new supply or to file a petition renewing its request to include the carrying costs of such projects in the SIC at a later date. The Commission's review in the future will include consideration as to whether the proposed supply addition is consistent with an overall integrated supply and demand plan, thereby holding the Company accountable to the Commission's desire that the Company become a proactive water conservation manager.

We also are not approving JP \$XVI.2, which states, "Additional projects may be proposed at the time that the Company files for recovery of approved, in-service projects." No explanation has been offered by the signatories for its inclusion. We are not inclined to expand the scope of the SIC to allow it to be used for recovery of carrying charges associated with projects that were not included or made available for review and scrutiny in this rate filing.

#### Water Quality

Concerns about water quality, specifically water that is brown, odoriferous and/or has been deemed by customers to be undrinkable due to its odor and/or bad taste, were raised at the

public statement hearings in June and in September, and in testimony submitted by Harriet Cornell in opposition to the JP.<sup>137</sup> We are aware, both from Staff's monitoring of local press coverage and from comments submitted by elected officials, parties and the public that such concerns have surfaced. We note that some of the parties and commenters have attributed the discoloration and bad smell and taste of their water to the need for the Company to expedite its replacement of mains. However, Suez attributes such issues to a unique set of circumstances including usually low levels of supply at Lake DeForest.

In its initial filing, the Company proposed capital improvements to the Lake DeForest Water Treatment Plant.<sup>138</sup> The Company's justification for pursuing the Lake DeForest treatment modification project was to ensure continued compliance with water quality regulations regarding disinfection byproducts, total organic carbon, manganese removal, algae treatment, and turbidity. This project, along with several others, were reviewed by Staff, with a scaled back version of this project being recommended by Staff and now included among the various capital projects we have been asked to approve pursuant to the terms of the JP.<sup>139</sup>

Discolored, murky and/or smelly water, even when it passes testing by the Department of Health, is understandably neither appealing nor palatable as a source for drinking, bathing or washing. This fact, especially when coupled with the fact that our record establishes that the public has been expressing concerns about discoloration, bad smell and taste

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<sup>137</sup> Tr. 988-989 and Transcripts of Public Statement Hearings (June 15, 2016, 3 p.m. (Tr. 48-50) and 7 p.m. (Tr. 51, 112) and June 16, 2016 at 7 p.m. (Tr. 61-61, 169)).

<sup>138</sup> Hearing Exhibit 1, McEvoy Testimony, pp. 15, 22-23.

<sup>139</sup> JP at 19, Appendix 3 at 18-19.

since at least June 2016, buttresses our conclusion that the measures aimed at addressing these issues, like the Lake Deforest improvements (pilot) project, must be adopted by us and implemented expeditiously and successfully by the Company. However, given the importance of these issues, we find that more should be required. We therefore are directing Suez to consult with Staff and to communicate with interested customers and community representatives, initially in North Rockland County, and then elsewhere, as appropriate, to proactively clarify exactly when, where, and why discoloration, odor, and bad taste is a problem and to explain the steps that it is taking to address the problems. Suez will be required to file a report with us within 30 days of the issuance of this order, explaining the root causes and solutions to these issues and to also consult with Staff within the same 30-day timeframe.

We will require that Suez submit periodic written reports so that customers and our Staff can analyze and comment on whether adequate progress is being made. The reports should address the Company's initial plan for diagnosing and addressing discoloration and bad odor and taste, and should provide periodic updates as to its progress. Such reports will be due quarterly, starting June 30, 2017, and continuing thereafter unless and until the Department determines that less frequent reports will suffice.

Additionally, to help ensure that Suez makes effective use of all available data to rapidly detect and resolve water quality issues elsewhere in the service territory, we are directing the Company to renew and expand cost-effective mechanisms by which customers can alert the Company to such problems. These approaches must include a customer reporting feature on the Company's website. The Company will be required to submit a plan for continually obtaining customer input on water quality issues. Continued monitoring will help us and

Staff to determine whether the capital improvements and pilot project contemplated in the rate plan have been successful in addressing these water quality concerns.

Equity Ratio, Return on Equity, and Earnings Sharing

The revenue requirements for all three years of the rate plan set forth in the JP are based on a capital structure with a 46% equity ratio and a 9.0% ROE.<sup>140</sup> Pursuant to the JP's earnings sharing mechanism (ESM), Suez will retain the first 65 basis points of excess earnings before any sharing occurs. The next 100 basis points will be shared equally between ratepayers and shareholders, and 90% of any earnings in excess of 10.65% will go to ratepayers (with the Company retaining 10%). The earnings calculation will be done on a three-year cumulative basis, and the common equity used in the calculation will be the lesser of the Company's actual ratio or 46%.<sup>141</sup> Any earnings shared with the customers would earn interest at the Commission-determined other customer capital rate then in effect beginning July 31, 2018 (i.e., at the mid-point of the three-year Rate Plan). Interest would be earned on the net of tax balance that will continue unless and until any over-earnings are fully passed back to customers.

In its rate filing, the Company used a 50% common equity ratio for ratemaking purposes. Staff countered with a 47% equity ratio. No other party testified regarding what an appropriate common equity would be for setting rates for Suez. The JP calls for a 46% common equity ratio.

Regarding the appropriate ROE for setting rates, the Company initially testified to a 9.3% ROE for a one-year rate plan. Staff countered with an 8.5% ROE recommendation for a

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<sup>140</sup> JP §V.2.

<sup>141</sup> JP §V.3.



one-year rate plan, using the general methodology we have repeatedly used to determine ROEs in litigated cases based on the discounted cash flow (DCF) and capital asset pricing models (CAPM). No other party submitted initial testimony as to an appropriate ROE.

The JP's 9.0% ROE is described as a reasonable compromise by both Staff and Suez, citing the additional business and financial risks inherent in a three-year rate plan.<sup>142</sup> Municipal Intervenors, PULP, and the Municipal Consortium contend that the JP's ROE is too high. They argue that the JP's ROE of 9.0% is significantly higher than the 8.5% ROE that Staff supported as its litigated position in this case. The Municipal Consortium adds that the JP's ROE is higher than the ROE supported by the Staff in other recent cases such as Corning Gas (Case 16-G-0369, 8.2%) and New York American Water (Case 16-W-0914, 8.55%) and is higher than a likely litigated result, which it opines would probably be in the low 8% range if testimony were submitted today. The Municipal Consortium also points to the many reconciliations to argue that they lower the Company's risk, and thus should also result in a lower ROE.

Municipal Intervenors assert that all JP ROEs and so-called "stay-out premiums" should be re-examined, because, under JPs, the utility now generally gets, as part of the agreed-to concessions, reconciliation mechanisms and surcharge clauses that cover most every expense that might place the utility at risk of failing to earn its allowed ROE. As a result, Municipal Intervenors and PULP contend that stay-out premiums are no longer necessary or in the public interest as they simply result in inflated rates.

Staff characterizes as speculative the assertion by the Municipal Consortium that if Staff presented testimony on

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<sup>142</sup> Staff Initial Brief, p. 10; Suez Initial Brief, p. 16.

the rate of return today, "it would probably be in the low 8% range" and the claim by Municipal Intervenors that the JP's 9.0% ROE is higher than the likely outcome in a litigated case simply because it is higher than Staff's initial filed position. Staff notes that the claim by Municipal Intervenors also ignores the fact that the JP's equity ratio of 46% is lower than Staff's litigated position and ignores the Staff's proposed equity ratios in the cases cited by Municipal Intervenors (48% for Corning (Case 16-G-0369) and 45.1% for New York American Water (Case 16-W-0259)). Staff states that viewing ROE and equity ratio together, the simplistic comparison offered by Municipal Intervenors undermines their point.

With respect to the criticisms of the alleged stay-out premium, Staff notes that the size of the stay-out premium is not specified in the JP. Responding to PULP's allegation that Staff has presented no evidence of the added financial risk associated with the longer duration of the plan, Staff notes that it testified that the financial risk associated with the longer duration of the rate plan is that the returns available to investors may go up in the future, and investors nearly always require a premium for committing their funds for longer periods of time.<sup>143</sup>

The Municipal Consortium and PULP assert that the ESM is unfair. The Municipal Consortium says that when the ESM is added to the Conservation Incentive, Suez could earn up to 128 basis points without having to share anything with the ratepayers.<sup>144</sup> PULP argues that the ESM is flawed because it is larger than most JPs and its calculation excludes the

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<sup>143</sup> Tr. 626-627.

<sup>144</sup> Municipal Consortium Initial Brief at 6.

shareholder portion of property tax refunds and reconciliations, and antenna lease revenues.<sup>145</sup>

Suez responds to the opposing parties' ESM arguments by observing that the ESM provides important benefits to ratepayers, as recognized by the Commission when it stated that, "[i]n general, an ESM provides a utility a financial incentive to control costs while allowing customers to share in efficiency gains," and "significant safeguard against excess earning by a utility if earnings prove significantly higher than what was projected for rate-setting purposes", "benefits [that] are well-recognized."<sup>146</sup> Suez adds that the Commission has highlighted that "an ESM has been included ... in the multi-year rate plans of other utilities."<sup>147</sup> Suez also adds that the ESM does not reward the Company for not filing for new rates; rather, the ESM protects customers from excessive earnings by the Company by allowing customers to share in the earnings achieved above the dead band. As to the allegation that the dead band is too large, Suez counters that it is identical to the dead band established for Suez Water Westchester, Inc.<sup>148</sup>.

The three items of equity ratio, ROE, and an ESM are inter-related. Each cannot be looked at solely in isolation in a multi-year joint proposal, and they also may reflect trade-offs with other aspects of a multi-faceted agreement. That said, we have reviewed the reasonableness of each aspect of

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<sup>145</sup> PULP Initial Brief, p. 14.

<sup>146</sup> Suez Reply Brief at 5, citing Case 14-E-0493 et al., Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Orange and Rockland Utilities, Inc. for Electric Service, Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plans (issued October 16, 2015) at 44-45.

<sup>147</sup> Id.

<sup>148</sup> Suez Initial Brief, p. 20.

these provisions, noting the opposition from some parties to both the ROE and the ESM.

As to the 46% common equity ratio used to determine the revenue requirements in the JP, no party has objected to this proposed capital structure. While it results in leverage that is slightly higher than what Staff proposed in its initial filing (47% common equity ratio), the result falls within a reasonable range for a utility operating under the constructs of the rate plan laid out in the JP. While we have approved 48% common equity ratios in some recent cases, we have also approved lower equity ratios. For instance, in June 2014, we approved a 44% equity ratio for Suez (then, United Water New York). Given the business and financial risks faced by Suez, the use of a 46% common equity ratio is reasonable.

We further find that the JP's 9.0% ROE over the three-year term of the rate plan is reasonable, based on the record and the current economic conditions and interest rate environment. This ROE level adheres closely to our practices and policies in rate setting, in that it relies on the sound financial models supported by expert testimony that the Commission has consistently endorsed in its rate-setting orders. While the 9.0% ROE may be slightly higher than what would be the likely outcome of litigation in a one-year rate case, this is to be expected given the business and financial risk associated with a multi-year agreement.

Municipal Intervenors argues that any stay-out premium is not in the public interest, given the various reconciliations and revenue true-ups the rate plan contains, as well as the System Improvement Charge.<sup>149</sup> While there are reconciliations and the SIC included in our rate plan, these do not remove all business and financial risk found in a multi-year rate plan.

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<sup>149</sup> Municipal Intervenors Initial Brief, p. 4.

Suez has over \$16 million of O&M expenses which are not reconciled. If in Rate Year Three these costs alone end up being 10% higher than forecast, then the Company's ROE will be negatively impacted by approximately 65 basis points.

In addition, the components of the JP in no way address the additional financial risk that is introduced by locking in a return for an extended period of time. As Staff points out, investors generally require a higher return to commit their funds for longer periods of time.<sup>150</sup> Proof of Staff's point can be seen in the spread between one-year and three-year Treasury bonds which, as of late December, was nearly 70 basis points.

In light of the additional business risk and the need to compensate investors for additional financial risk when entering into a multi-year agreement, the agreed to 9.0% ROE is a reasonable outcome relative to Staff's initial 8.5% ROE recommendation. While the Municipal Consortium is correct that Staff in the Corning rate case testified at an 8.2% ROE, interest rates have been quite volatile, going down significantly since the Brexit vote in the United Kingdom in June and then increasing since the November election.<sup>151</sup> Pointing to any particular return on equity recommendation during this time period is not necessarily relevant to today. Updating the Staff methodology for calculating an ROE for a one-year rate case, through the end of December, would result in a recommendation of 8.5% had this been a litigated one-year rate case. Given the current financial environment, the Joint Proposal's 9.0% return on equity is reasonable, given additional

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<sup>150</sup> Staff Reply Brief, p. 6.

<sup>151</sup> Utility stocks prices have moved in the corresponding opposite directions as interest rates.

business and financial risk inherent in the rate plan included in the Joint Proposal as compared to a litigated one-year case.

Regarding the JP's ESM, we find that it will provide critical protection to ratepayers over the term of the multi-year rate plan. In addition to providing Suez an incentive to control costs and improve their financial performance, the mechanism will provide customers with a reasonable share of the benefits if the Company's efforts yield significantly improved earnings that trigger sharing thresholds.

We reject PULP's contention that increasing costs over time are an indication that ESMs are not an effective regulatory tool in encouraging cost control.<sup>152</sup> The fact that costs have increased over the past ten years, given inflation and additional capital expenditures, is in no way an indication that allowing the Company to retain a portion of efficiencies gained until the next time rates are set is not a reasonable ratemaking construct.

The use of a dead band provides an incentive for a company to achieve cost efficiencies, as it gets to retain all savings up to a certain dollar amount until rates are reset. This incentive would be lessened if sharing was to begin at the allowed ROE, as PULP has advocated for in this case. PULP has expressed concern that the dead band is larger than that found in most multi-year agreements.<sup>153</sup> The Commission has approved numerous dead bands over the past several years, with sharing beginning anywhere from 40 to 75 basis points above the ROE allowed in the case. As was mentioned earlier, the dead band is identical to the one established for Suez Water Westchester, Inc. and is consistent with providing a robust incentive to a Company that needs to substantially improve its operations.

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<sup>152</sup> PULP Reply Brief, p. 14.

<sup>153</sup> Id.

The 65 basis point dead band, and its calculation methodology, is a reasonable outcome. While the Municipal Consortium raised concerns over the inclusion of both a dead band and the Conservation Incentive, these are two distinct mechanisms and are not related. With or without a Conservation Incentive, the Commission has a legitimate interest in encouraging cost effectiveness with an ESM.

We find that the JP has reached a fair compromise on the three inter-related items of equity ratio, ROE, and an ESM. The resulting rates of return for each rate year are reasonable in light of the risks faced by the Company, current investor requirements, and the need to keep rates as low as possible.

#### Revenue Allocation and Rate Design

Adopting the JP's proposed rate design and revenue allocation proposals will replace the current seasonal summer/winter inclining block rate structure with a year-round conservation-oriented block rate structure. It would change the rate structure for the single-family residential service class (SFR), multi-family residential (MFR) service class, and non-residential (NR) service class.

Joint Briefing Parties and others argue that the JP's new conservation-oriented rates are not based on a comprehensive service classification study and, as a result, one cannot determine whether the new rate structure is just or will be effective. In order to determine how ratepayers would be impacted and whether the new rate design will achieve its objective, several parties urge us to require the Company to conduct and file a service classification study, some advocating that this be performed within 120 days of this rate order, while another party recommends the study be filed by the Company within one year, with a revenue neutral rate redesign to promote

conservation being implemented next rate year, based on the results of the study.

Municipal Intervenors, Rockland County, and the Task Force question the rate redesign, saying that reducing summer rates does not align with a conservation goal and creates doubt as to whether such a change is appropriate. Rockland County and the Task Force say that under the proposed new rate design, there will be classes of customers that display seasonality, but nevertheless will have lower peak summer rates as compared to the current structure. They express concern that with summer discretionary use being a high priority, it must be properly addressed. They argue that the proposed rates fail to encourage changed behavior towards water savings at the most critical times, and instead are likely to result in greater water use with what will be cheaper rates as compared to previous summers.

Mr. Levine recommends that the impact of conservation rate design should be studied as to its possible impact on large families which he defines as having two parents and (at least) six children living in the same home, with the goal of creating a specialized conservation program for them and determining if they would be unfairly targeted by the conservation design rates.

Staff responds that the proponents of waiting to implement the proposed rate design changes, either in whole or in part, have taken unrealistic positions that lack an understanding of the ratemaking process. To the extent some parties are suggesting the retention of some elements of the existing rate design, based on the rate class (e.g., implementing the SFR changes but retaining existing MFR and/or NR rates), Staff says it is unclear how the two rate schemes would interact or would impact revenues until the new MFR and/or NR rates are implemented. Staff argues that accepting such vague alternatives in lieu of the concrete terms of the JP will



extend the litigation of this case beyond the statutory deadline, for no benefit.

Suez states that the opponents' primary argument against the JP's revenue allocation and rate design provisions is that the re-design of the rates and the rate structures should not occur absent a comprehensive service classification study. The Company notes that the JP requires Suez to perform an updated service classification study and file it as part of its next rate case. It adds that requiring the completion of the service classification study prior to the filing of the Company's next rate case is unjustified, because its current classifications are sufficient and the de minimis number of potential misclassifications that may exist, approximately 0.2% of customers, a figure that is typical for its size, do not meaningfully interfere with the JP's reasonable revenue allocation and rate design.

It is important that rate design promote the goal of conservation. We agree with the Company and Staff that the proposed rate design is reasonable and we are adopting it as part of this rate plan. We however are modifying the requirement to file an updated classification study, and instead requiring that the new study be filed on February 1, 2019.

Residential usage accounts for over 70% of total system demand and the vast majority of that is SFR usage.<sup>154</sup> SFR usage exhibits significant seasonality with discretionary outdoor use occurring during the summer period. MFR exhibits little seasonal use.<sup>155</sup> While commercial usage exhibits seasonality, it accounts for approximately 21% of total usage and industrial usage accounts for 4%.<sup>156</sup>

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<sup>154</sup> Hearing Exhibit 34 (Black and Veatch Report, pp. 8-16).

<sup>155</sup> Id.

<sup>156</sup> Id.

A key objective of rate design is to create inclining rates with the highest rate block set to approximate discretionary seasonal (outdoor) use. SFR rate design currently has two tiers with summer rates 150% of winter rates. This design increases rates in the summer for both discretionary and non-discretionary use. The proposed three-tier rates are designed to place discretionary use in the third tier. The proposed SFR design better targets discretionary use and will send strong price signals to the third tier with the proposed third tier rate set higher than the current summer rate. By setting a higher price in direct relation to a customer's discretionary usage without charging customers more for summer usage relative to winter usage, the new rate design provides a strong incentive to SFR customers to conserve year-round by providing lower rates if customers remain within the first two rate blocks.

Regarding the proposed NR/commercial rates, the record shows that the proposed rates will result in the NR class getting decreases during the summer months, but this class will also experience increases during the winter months. The current NR rates effectively have one tier consisting of usage above 3 ccf with the current winter rate at \$4.195 for usage beyond 3 ccf (the first 3 ccf is charged \$3.550) and is increased to \$6.289 during the summer months. The proposed NR rates for Rate Year One are \$4.854 for the first 900 ccf and \$5.855 over 900 ccf; these rates increase to \$5.278 and \$6.278, respectively, in Rate Year 3. As a result, non-seasonable NR customers should experience increases on a yearly basis. Depending on how much water is consumed, seasonal NR customers may see modest yearly decreases in Rate Year One, with the decrease being more modest at higher usage levels due to the proposed introduction of the two rate tiers. While some NR customers may experience a bill

reduction in Rate Year One, the long term price signal is conservation oriented.

The current MFR rates have two tiers (first 3 ccf \$3.494/winter \$5.25/summer and over 3 ccf \$4.091/winter, \$6.146/summer). The proposed MFR rates for Rate Year One have three tiers (first 20 ccf \$4.4, next 380 ccf \$4.9, and over 400 ccf \$5.9). The design of the MFR structure ensures that the rate tier increases do not increase as steeply as single-family rates, in recognition that multi-family usage is not nearly as seasonal as single-family usage.

As noted in footnote 7, *supra*, Rockland County did not file acceptable briefs pursuant to the Administrative Law Judge's clear instructions and their arguments are effectively waived. Nevertheless, we exercise our discretion to acknowledge one of the points raised in testimony. The direct testimony of the Amawalk Consulting Group on behalf of Rockland County asserts that a multi-family dwelling with 100 units and above average usage may experience a bill increase above the average.<sup>157</sup> This occurs because the larger number of units brings the MFR usage more quickly to the higher rate tiers. The record does not demonstrate how many accounts meet the hypothetical parameters asserted by Amawalk. We note that both the rebate program and the updated classification study are available to ameliorate and address the potential issue raised by Rockland County.

In conclusion, we find that the proposed rate design reflects a purposeful balancing of the interest in encouraging conservation while being mindful of the type of customers, the type of use that may be impacted by the change, and administrative practicalities.

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<sup>157</sup> Hearing Exhibit 46 at 10.

We also are not convinced that a substantial acceleration of the due date for providing an updated classification study has been shown to be warranted or to be beneficial. No one can plausibly assert that increasing the rates for discretionary water usage on a year-round basis is an unreasonable way to incent or encourage year-round conservation, an outcome that, by all indications, is a shared goal. In addition, there has been no demonstration that the existing data is not a sufficient basis for moving forward with the proposed rate design changes. In short, we agree with Staff, that, while all parties want to act with the best available data, the perfect cannot be allowed to become the enemy of the good. What we need and must require is something reasonable. The currently available data is sufficient basis for the proposed changes and the proposed changes are a reasonable means of trying to promote year-round water conservation. The proposed rate design changes therefore should be implemented at the beginning of this rate plan, without further delay, and need not await a new study. We however will require the new classification study to be filed on February 1, 2019.

Another reason not to delay the proposed rate design changes is that the updated study will take time, definitely more than the three-month period advocated by Rockland County. As noted above, the study will address, among other things, whether the MF class should be divided into subclasses and the seasonality of industrial customers' water use to determine if there should be a seasonal subclass. As a result, there is the potential for creating additional subclasses or seasonal rate classes. Expecting the Company to perform the amount of work that will be required to undertake this study in three months is unrealistic and likely to result in an inaccurate and flawed design. We note that the updated study will be filed with the Commission thus persons interested in reviewing it may do so.

We decline to require the study to be expanded to include the anthropological study advocated by Mr. Levine. No such service classification currently exists, and, if it were established, it would be unjustifiably difficult to administer.

The JP calls for the Company to develop a "drought rate" that would go into effect whenever there is government declared drought, and would increase highest block rate by 25%. Any resulting increase in revenues will be deferred for future use in conservation efforts. We agree that the drought rate provides beneficial price signals to ratepayers during times of limited supply and, by virtue of its limited focus and effect on the largest rate block, will properly target discretionary water use. In addition, the effect of providing for the deferral of revenues derived from the drought rate will be to prevent triggering the JP's revenue sharing mechanism, which would have the perverse effect of reducing rates. Given its benefits and record support, we approve the proposed drought rate. Furthermore, we will reserve the right to revisit the threshold for triggering the drought rate to ensure that it continues to serve the Commission's conservation goals.

#### Low Income Rebate Program

The Municipal Consortium asserts that the Company should be required to develop the low income rebate program collaboratively, with the Task Force, and that providing an opportunity to comment is insufficient. We disagree. The Municipal Consortium has not shown that requiring the Company to develop the low income rebate program collaboratively with the Task Force is necessary or would be any more beneficial than having the Company solicit input from interested stakeholders to develop the program and then providing such stakeholders with the opportunity to also comment on the program when it is filed with the Commission. As discussed above in connection with the

C&E Program, however, we direct the Company to study the feasibility of a direct install program in connection with its effort to implement a low income rebate program.

#### Management & Services Fees

Suez Water Management & Services Company provides various services to Suez and other Suez affiliates in North America. These services include, among other things, tax, accounting, and human resources. Management & Services fees would be included in rates pursuant to the new Management & Services allocation methodology. This expense has been reviewed and adjusted by Staff. The JP includes in revenue requirement approximately \$6.194 million in Management & Services fees, which is \$954,000 less than Suez's initial litigation position.

Because the current expense is much higher than the Management & Services expense level that was approved in the previous rate case, Municipal Intervenors and the Municipal Consortium each argue that the Management & Services amount should be reduced. The reductions they propose ignore the significant, documented changes that have been made with respect to calculating these expenses and, in our view, are arbitrary. They are accordingly rejected.

#### Rate Case Expense

The Company's rebuttal update requested \$1,285,442 in rate case expense. The JP allows \$1,034,532, of which \$929,767 relates to the current rate case, and \$104,765 is the unamortized balance related to the previous rate case. The JP proposes to amortize this expense over three years, or \$344,844 per year.

Municipal Intervenors, PULP and others contend that rate case expense is too high, due in part to the Company's decision to hire two law firms to represent it in this case.

Mr. Levine says that excess legal fees should be disallowed.<sup>158</sup> The Municipal Consortium argues that legal fees associated with the HWSP should not be recovered from ratepayers. Municipal Intervenor argue that rate case expenses should be normalized and reduced to \$600,000, an amount it says is in alignment with the amount sought by New York American Water in its pending rate case. At this level, and amortized over three years, Municipal Intervenor say that the rate year revenue requirement would be reduced by \$133,337.<sup>159</sup>

PULP argues that the costs for the utility's rate of return witness who testified in conflict with the Generic Financing Methodology should be disallowed. PULP recommends that rate case expense be reduced to the 2006 level of \$580,000, inflated to 2016 dollars. The Municipal Consortium, PULP, and Mr. Levine contend that the fact that intervenors do not have the same financial resources as the Company should be considered.

The amount proposed in this case compares favorably to the Company's original request (\$1,233,020) and the amount that was allowed by the Commission in the Company's last rate case (\$942,885). The proposals to reduce this expense ignore these facts. The \$929,767 proposed for processing this rate case were expenses reviewed and adjusted by Staff. In addition to the regular consultant expenses for legal and a rate of return witness, the Company also incurred costs that were unique to this case, namely a conservation study and a depreciation study. This case was also heavily contested, which requires more hours of legal work. The Commission therefore rejects the arguments that the expense should be further reduced.

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<sup>158</sup> Levine Initial Brief at 6.

<sup>159</sup> MI Initial Brief at 15.

Reconciliation for Underspending on Net Plant

In order to ensure that the Company has the funds necessary for reasonable capital investments but that rates are not set unnecessarily high, our rate plan includes a downward-only net utility plant and depreciation mechanism that provides for annual reconciliations of the average net utility plant and depreciation expense revenue requirement to the target average net utility plant and depreciation expense. The revenue requirement impact of any cumulative underspending shall be deferred for customers' benefit. This mechanism is consistent with Staff's litigation position<sup>160</sup> and is being implemented in order to protect customers from paying rates that would be too high if Suez under-spends its capital budget or if there are significant delays in projects being completed and placed in service.

Additional Proposals

Low Income Discount Program

PULP recommends that the Commission direct the Company to file tariffs to implement a low income rate reduction program equivalent in nature to industry best practices and consistent with whatever program will be adopted for New York American Water in Case 16-W-0259, and the programs provided by Suez in its non-NYS service territories.

Suez notes that PULP acknowledged in its testimony that no major private New York water utility currently offers a low-income rate reduction program. Suez also observes that Staff testified that it rejected the program PULP is advocating because it is not, by a large margin, cost-effective.

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<sup>160</sup> See Hearing Exhibits 42 (Staff Infrastructure Panel Testimony, filed July 1, 2016, at 23) and 43 (Staff Infrastructure Panel Exhibits, SIP-4).



A low income program for Suez NY was not developed in the context of the rate case. Nonetheless, we support PULP's proposal to implement a program as soon as practical. The JP provides that the Company will solicit input from interested stakeholders to develop a water conversation program targeting low income customers and provide a proposal to Staff within six months after Commission approval of the proposed rate plan. In the same time frame, Suez is directed to work with Staff and interested stakeholders to design a program to deliver low income discounts to income eligible customers beginning in the third quarter of the first rate year. As the administrative costs associated with income verification could be significant, the parties should work with local community based organizations, social service agencies and the local electric and gas utility to minimize the costs of administering the program. The parties should also develop a consistent and replicable means to identify likely benefit recipients. A proposal should be submitted for Commission approval within nine months of this order, including for the recovery of incremental costs.

Translation of Notices and Outreach Materials

PULP and Mr. Levine assert that termination notices should be translated into Spanish, Creole and Yiddish. PULP recommends that the Commission require Suez to translate all of its customer outreach and education materials into Spanish, Creole and Yiddish.

Staff and Suez respond that the Company's communications are consistent with the Commission's regulations regarding translated material.<sup>161</sup> Suez observes that imposing full translation costs on all customers is particularly

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<sup>161</sup> Tr. 730, 1517-1518.

difficult as no section of either the PSL or the Commission's regulations directly require or authorize a water utility to translate all of its materials. Suez highlights that the JP provides for more limited translation services, namely the translation of specific outreach and education materials into Spanish, Yiddish and Creole, which are reflective of the largest non-English speaking communities in the Company's service territory and therefore reasonable.

Suez notes that the Company currently engages in customer outreach and education and understands the many benefits of such activities, but explains that the proposals in this proceeding regarding customer outreach and education were impractical, not cost-effective or inferior to the provisions included in the JP. With respect to PULP's criticism of the JP for not requiring the Company to translate all its materials into other languages, Suez argues that PULP ignores the fact that it is neither cost-effective to provide unlimited translation services for all potential languages nor is it in the public interest because associated costs would be borne by ratepayers. Additionally, says Suez, PULP's witness, Mr. Berkley, acknowledged that PULP did not conduct a cost-benefit analysis of its full translation proposal.

Staff and Suez are correct in stating the Company's communications are consistent with the Commission's regulations regarding translated materials. Further, as previously stated Suez may not know if a specific customer speaks a language other than English. We will not require that the Company translate documents at this time. Instead, the annual notification of rights and responsibilities and disconnection and termination notices should be translated upon request.

Tariff language - Willful Waste of Water

The proposed tariff language reads as follows:  
Willful waste or use of water through improper and imperfect pipes, or by another means. Whenever leakage occurs on pipes and facilities owned by the customer, the customer shall make necessary repairs without delay. If the customer fails to make said repairs within a reasonable time, the Company reserves the right to discontinue the supply until such time as the leak is repaired and all costs incurred by the Company are paid.<sup>162</sup>

PULP asserts that the proposed willful waste of water provisions is flawed because it lacks strict "HEFPA-like" protocols that will protect residential customers, especially low income customers, threatened with termination due to leaks. PULP also asserts that it is not consistent with public policy because the contemplated notices will not be translated into languages understood by the customers.<sup>163</sup>

Staff responds that PULP's arguments are inconsistent, and unfounded. Staff notes that termination would still have to comply with Suez's tariff and the Commission's requirements for termination of service, as reflected in United Water New York, Inc. Schedule for Water Service, Par. 10-16, leaves 39-50 and in 16 NYCRR Part 533). There are numerous provisions included in the tariff that require advance notice and that restrict the circumstances under which residential service may be terminated.<sup>164</sup> In addition, there are regulatory provisions that implement the Home Energy Fair Practices Act as it applies to

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<sup>162</sup> JP Appendix 3, p. 5 of 19.

<sup>163</sup> PULP Initial Brief at 19 and Reply Brief at 15-16.

<sup>164</sup> See, e.g., Tariff leaves 40 and 41, Paragraphs 10 and 11.

residential customers of waterworks corporations.<sup>165</sup> These provisions, along with the requirement to include a language block on disconnection and termination notices, provide the type of protections that PULP is seeking.

### Procedural Issues

#### PULP

PULP objects to the bench ruling striking as irrelevant the portions of its testimony alleging that Staff and the Company violated the Settlement Guidelines by engaging in communications aimed at converting an agreement in principle into a JP. PULP argues that the utility is prohibited under the Settlement Guidelines from conducting secret settlement communications with Staff or any other party and that this prohibition is the foundation upon which the Guidelines are based. PULP then proceeds to assert that the ALJ misapplied the notice requirement and created a distinction between settlement negotiations and converting an agreement in principle into a JP that does not exist in the Settlement Guidelines. PULP asserts that "substantive and tactical settlement communications" took place, in violation of the Guidelines, and as such, the penalty should be our rejection of that JP.

Staff asserts that PULP's inclusion of this issue on brief is an attempt to introduce the material that was struck. Staff argues that since PULP did not timely seek an interlocutory review of the ruling to strike the testimony (16 NYCRR §4.7), its arguments regarding the merits of the ruling cannot constitute an appeal nor reverse the ruling. Staff adds that since PULP's arguments are based on the struck testimony, they, therefore, are not supported by the record and should be dismissed without consideration.

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<sup>165</sup> See 16 NYCRR Part 14.

Suez notes that all parties were fully notified by email of all settlement meetings and numerous intervenors, including PULP, participated in the negotiations; settlement negotiations resulted in a written agreement in principle between Staff and Suez on August 12, 2016, an agreement PULP chose not to join; settlement discussions ceased on August 12, but communications between the two parties to the agreement in principle continued as necessary to convert the agreement into a Joint Proposal; and a courtesy copy of the finalized JP was circulated to all parties, including PULP, on August 26, 2016. Suez says that the fact that it and Staff communicated with one another to convert the agreement into a JP does not mean that Staff and the Company engaged in "secret" settlement meetings or other behavior that required notice to the parties. Suez continues that PULP's interest in this proceeding vis-à-vis the JP was satisfied when the final JP was filed with the Commission, noting that the process allowed PULP to file testimony on the JP and cross-examine its proponents.

Having considered all of the foregoing, we decline to reject the JP on the grounds that "substantive and tactical settlement communications" took place, in violation of the Settlement Guidelines. Under the circumstances presented here, communications that occurred between those who have agreed to an agreement in principle and are responsible for converting that agreement into a final Joint Proposal after parties have ceased settlement negotiations do not violate our Settlement Guidelines.

Levine and Task Force

Suez's expert from Black & Veatch did not submit testimony and thus was not available for cross-examination even though he was present at the evidentiary hearing. Mr. Levine and the Task Force suggest this was inappropriate. We disagree.

First, neither of these parties requested the opportunity to examine the Black & Veatch expert; and, second, to the extent the witnesses that did provide testimony relied on the Black & Veatch reports, we note that both Mr. Levine and the Task Force were given the opportunity to cross-examine those witnesses.

Miscellaneous Joint Proposal Provisions

JP §XXVII.A.4, A.5, B, C, E, G, H, and I are routine terms governing only the signatories' relationships and thus are not adopted as part of this rate plan.

Alternative One-Year Rate Plan

Because we are making substantial modifications to the JP, we will require that Suez confirm to the Commission its unqualified acceptance of the Modified Multi-Year Rate Plan established by this Order prior to its becoming effective. In the event that Suez does not confirm its unqualified acceptance of the Modified Multi-Year Rate Plan established in this Order, then the revenue requirement that will be established effective February 1, 2017, on a temporary basis, will be an increase of \$6.47 million. This one-year revenue requirement is based on the terms of the Joint Proposal as modified above, including the modification to the return on HWSP, except that the return on equity (other than for HWSP) will be based on Department Staff's proposed 8.5% ROE and Department Staff's 47% common equity ratio. The alternative rate terms, conditions, and provisions associated with the \$6.47 million one-year revenue requirement that we adopt comprise the JP as modified above except as follows: 1) there will be no earnings sharing mechanism; 2) property taxes will not be subject to reconciliation; and 3) the System Improvement Charge mechanism will operate only to the extent needed to accommodate the Conservation and Efficiency Program and Incentive Mechanism. If Suez chooses to not accept

the modifications, the alternate one-year rate plan will go into effect on a temporary basis until further process results in a permanent rate order.

#### CONCLUSION

The terms of the multi-year rate plan adopted herein serve a variety of goals that are consistent with the public interest. The record demonstrates the need for the rate increases, but the increases will be implemented in a way that mitigates bill impacts. By spreading the increases out over a multi-year term, Suez will be able to focus on much needed improvements to its infrastructure and on plans that will promote and encourage conservation and reduce non-revenue water, which in turn will benefit ratepayers. Overall, we find that our adoption of the rate plan, as described herein, will result in just and reasonable rates and ensure safe and adequate service.

#### The Commission orders:

1. The rates, terms, conditions, and provisions of the Joint Proposal dated September 2, 2016, filed in this proceeding and attached hereto as Attachment 1, are modified as described in the Order above (hereafter "Multi-Year Rate Plan") and adopted and incorporated to the extent consistent with the discussion herein. An officer of Suez Water New York Inc. is directed to file with the Commission a letter confirming its unconditional acceptance of the Multi-Year Rate Plan established in this Order by noon on January 27, 2017.

2. Suez Water New York Inc. is directed to file a cancellation supplement, effective on not less than one day's notice, on or before January 31, 2017, canceling the tariff amendments and supplements listed in Attachment 2.

3. Suez Water New York Inc. is directed to file a cancellation supplement, effective on not less than one day's notice, effective February 1, 2017, canceling United Water New York, Inc.' effective tariff schedule, P.S.C. No. 1, Supplements, and Statements.

4. In the event Suez Water New York Inc. does not unconditionally accept the Multi-Year Rate Plan established by this Order, it is directed to file, on not less than one day's notice, to become effective on February 1, 2017, a new tariff schedule, P.S.C. No. 1 under the name of Suez Water New York, Inc. that contains the rates, terms, conditions, and statements as set forth in the United Water New York, Inc.'s P.S.C. No. 1 - Water, and such tariff amendments, to be effective on a temporary basis, as are necessary to effectuate the One-Year Rate Plan described in the Order above.

5. In the event Suez Water New York, Inc. does unconditionally accept the Multi-Year Rate Plan established by this Order, it is directed to file, on not less than one day's notice, to become effective on February 1, 2017, a new tariff schedule, P.S.C. No. 1 under the name of Suez Water New York, Inc. that contains the rates, terms, conditions, and statements as set forth in the United Water New York, Inc.'s P.S.C. No. 1 - Water, and such tariff amendments, to be effective on a temporary basis, as are necessary to effectuate the Multi-Year Rate Plan described in this Order.

6. Suez Water New York Inc. shall serve copies of its filings on all active parties to this proceeding. Any party wishing to comment on the tariff amendments may do so by filing an original and five copies of its comments with the Secretary to the Commission and serving its comments upon all active parties within ten days of service of the tariff amendments. The amendments specified in the compliance filings shall not become effective on a permanent basis until approved by the



Commission and will be subject to refund if any showing is made that the revisions are not in compliance with this Order.

7. In the event Suez Water New York Inc. does unconditionally accept the Multi-Year Rate Plan established by this Order, it is directed to file such tariff changes as are necessary to effectuate rates for Rate Year Two and Rate Year Three. The Rate Year Two changes shall be filed no later than January 1, 2018 to become effective on a temporary basis on February 1, 2018. The Rate Year Three changes shall be filed no later than January 1, 2019, to become effective on a temporary basis on February 1, 2019.

8. Because this order provides for new rates to be implemented on February 1, 2017, the same date proposed both in the Company's initial filing and in the Joint Proposal, the make whole provision that was requested by Suez Water New York Inc. and was approved by order issued December 16, 2016, is unnecessary and is hereby deemed moot.

9. The requirement of the Public Service Law and 16 NYCRR §720-81 that newspaper publication must be completed before the effective date of the amendments authorized above is waived; provided however that Suez Water New York Inc. shall file with the Secretary to the Commission, no later than six weeks following the effective date of the amendments, proof that a notice to the public of the changes set forth in the amendments and their effective date has been published once a week for four consecutive weeks in one or more newspapers having general circulation in the service territory. The newspaper publication requirements are not waived with respect to Rate Year 2 and Rate Year 3, or with respect to tariff filings in compliance with this order made in subsequent years.

10. Suez Water New York Inc. is directed to file the report and to consult with Staff, consistent with the Water

Quality discussion above, within 30 days after this order is issued.

11. Suez Water New York Inc. is directed to file written reports, as described in the Water Quality discussion above, on a quarterly basis, with the first such report submitted on or before June 30, 2017, and with quarterly reports due on September 30, 2017 and thereafter, until New York State Department of Public Service Staff advises Suez Water New York Inc. that less frequent reports will suffice. The first such report shall include Suez Water New York Inc.'s plan for continually obtaining customer input on water quality issues.

12. Suez Water New York Inc. is directed to file its proposed low income discount plan within nine (9) months of the issuance of this order.

13. Suez Water New York Inc. is directed to file a service classification study, as described herein, by February 1, 2019.

14. Suez Water New York Inc. is directed to file its proposed low income rebate program, as described in this order, within six (6) months after this order is issued.

15. Suez Water New York Inc. is directed to publicly identify a specific manager whose responsibilities include water conservation efforts, and to continually maintain an accurate identification, on a publicly-available website.

16. In the Secretary's sole discretion, the deadlines set forth in this order may be extended. Any request for an extension must be in writing, must include a justification for the extension, and must be filed at least one day prior to the affected deadline.

17. This proceeding is continued.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS  
Secretary

CASE 16-W-0130

Commissioner Diane X. Burman, concurring:

As reflected in my comments made at the January 24, 2017 session, I concur in limited fashion on this item.